

defendant by his agent, Egan. Egan's authority from defendant was altogether verbal, and, in the opinion of the Full Court, was only that ordinarily conferred upon a real estate agent employed to find a purchaser for the property at a named price and to introduce him to his principal.

*Held*, following *Hamer v. Sharp*, L.R. 19 Eq. 108; *Wilde v. Watson*, 1 L.R. Ir. Chy. 402; *Prior v. Moore*, 3 T.L.R. 624, and *Chadburn v. Moore*, 61 L.J. Ch. 674, that such authority does not warrant the agent in signing a contract of sale so as to bind his principal. Authority to make a binding sale may be conferred verbally, but it must be clearly so expressed and proved by evidence of the clearest and most convincing kind, when the principal disputes it. The only evidence to prove that Egan had been authorized to make a binding sale in this case was his own, but the trial judge gave evidence to it, and said that he placed no reliance upon defendant's testimony in contradiction. Egan's account of his interview with defendant may be summarized as follows: "I called on Mr. Simon and asked him what he wanted for the property. He said about \$45 an acre. I said, 'Would you sell for \$40 per acre?' He said, 'Yes, if I get \$1,000 cash.' I asked for the exclusive right until Saturday night. He said, 'I will until Monday give it to no one else.' I said, 'All right, you will give me until Monday?' and he said, 'Yes, you can sell it for \$40 per acre and \$1,000 cash, and the purchaser to assume Bain's claim.'"

Egan received \$50 cash deposit from plaintiff and gave him a receipt for it, signed by himself as agent for defendant, and being the agreement of which specific performance was sought. The receipt stated that the remainder of the \$1,000 referred to by defendant was to be paid "on acceptance of title."

Egan went the same day to defendant, told him of the sale and shewed him the \$50 cheque and a copy of the receipt, when defendant at once objected to what Egan had done.

*Held*, distinguishing *Rosenbaum v. Belson* (1900) 2 Ch. 267, that the evidence was not sufficient to establish an authority in Egan to make a binding contract of sale of defendant's land.

*Held*, also, that the stipulation for payment of the \$950 only on acceptance of title was, in any case, clearly unauthorized and contrary to the express instructions given to Egan according to his own testimony, and that, on this ground also, specific performance should be refused.

Although accepting the findings of the trial judge as to the credibility of the witnesses, the Court in appeal may review the evidence, and in a proper case, reverse the decision arrived at as to the legal conclusions to be drawn from the admitted facts.