

The judgment of the Court (BOYD, C., CLUTE, J., MABEE, J.), was delivered by

BOYD, C.:—The contract sued on by Bradley is evidenced by the following memorandum of its terms in the shape of a receipt, thus: "Owen Sound, Nov. 9th, 1903. Received from Bradley \$100 in part payment of lot 16, 12th con. Albe-marle; balance, \$1,175, to be paid on the delivery of satisfactory deed. P.W. Black, agent."

The name of the vendor or owner is not given or referred to; Black signs the receipt as agent; but agent for whom? To arrive at that, extrinsic parol evidence is sought to be given, which is against the provisions of the Statute of Frauds. Dart says: "When the parties to the contract appearing in the memorandum are agents, the names of their principals may be proved by parol evidence, but this will only be so if the agents contracted as principals. If an agent contracts as agent, the memorandum must sufficiently identify his principal:" 7th ed., p. 235. The leading case is *Porter v. Duffield*, L. R. 18 Eq. 4, in which, like this, there was a memorandum, with one of the contracting parties neither named nor described, and Jessel, M.R., says: "I should be thrown upon parol evidence to decide who sold the estate, who was the party to the contract, the Act requiring that fact to be in writing:" p. 8. That case is approved and followed in *Jarrett v. Hunter*, 34 Ch. D. 184, and 10 years later in *Filby v. Hunsell*, [1896] 2 Ch. 741. Here you cannot gather from the receipt (signed by agent Black) the identity of one of the contracting parties. The agent himself does not purport to be the contracting party, but merely the recipient of the money, and one will have to find out by verbal and conflicting evidence for whom the property was sold. This seems to be a fatal legal objection at the outset to the success of the plaintiff: see *White v. Tomalin*, 19 O. R. 573.

The defendant was out of the country when this sale was made by Black, and she appears not to have returned till after the action was begun on 27th July, 1904. She writes a letter from California on 11th July, 1904, saying she is going to return at the end of the month. She had no interview with the purchaser nor any correspondence with him, and there were no papers available to plaintiff to supply the defect in the memorandum under the Statute of Frauds, as to the name of the other contracting party.