

said, in substance: "You will get your money in ten days, and, if you do not . . . , you can keep the \$15 which has been paid on the option." And Brisson then handed the \$15 to the defendant. . . . I find that the defendant accepted the \$15 upon the understanding . . . that he was to have his money within ten days. As a matter of fact, the money was not paid within ten days; but, on the last day that the option ran, the plaintiffs' solicitors wrote a letter which they placed under the door of the office of Brisson, the defendant's agent. . . . On the following day . . . he communicated the result to the defendant. The defendant and his wife, apparently, were satisfied to take the money within the time, but not . . . after the ten days had expired. . . .

The first question to be considered is, whether what took place between the defendant's wife and Brisson authorised him to enter into a binding contract for the sale of the land. . . .

[Reference to *Hamer v. Sharp*, L.R. 19 Eq. 108; *Rosenbaum v. Belson*, [1900] 2 Ch. 267; *Goodwin v. Brind*, L.R. 5 C.P. 299; *Chabburn v. Moore*, 61 L.J. Ch. 674; *Prior v. Moore*, 3 Times L.R. 624; *Wild v. Watson*, 1 L.R. Ir. 402; *Saunders v. Deuce*, 52 L.T.R. 644, 646.]

It would appear from a perusal of these cases that it is largely a question of fact whether the agent's instructions are "to find a purchaser" or "to sell"—from which latter instructions it may be implied that he is also to make a binding bargain.

Verbal assent would seem to be sufficient. See *Rosenbaum v. Belson*, [1900] 2 Ch. at p. 271.

In the present case the purchase was for speculation, and the verbal authority to the agent by the wife was to sell within a couple of weeks, intimating that \$200 in advance would be satisfactory. The sale was not made within the time. When the defendant accepted the \$15, there was no sale, as there was no acceptance. If, however, the defendant had been offered the balance of the purchase-money within the ten days, he would, I think, have been bound to accept it, not because he had authorised the option—which he had not—but because he then confirmed what he understood to be a sale for cash to be paid within ten days.

The agent exceeded his authority in giving the option, and the defendant was bound only to the extent of his assent, which was given upon the understanding that he was to receive the balance of the purchase-money within ten days. The money not having been paid, the bargain was off. There was no authority to sell except for cash. See *Tibbs v. Zirkle*, 55 W. Va. 49; *Field v. Small*, 17 Colo. 386.