analogy (*b*). Nor is it intended to discuss the circumstances under which optional contracts may be invalid, as infringing the laws against gambling.

2. Options distinguished from complete contracts.—The question sometimes arises whether a transaction amounts to a sale in presenti, or whether the transfer contemplated is dependent upon some future expression of his wishes by the proposed vendee. This must be determined by the words employed by the owner of the property.

It may also be a matter for controversy whether a person dealing with property on which there was an option had the right to dispose of it for his own personal benefit, or was merely acting as the agent of the owner of the property with the advantages and disadvantages of that position. The rulings referred to in the subjoined note will show the view some American courts have taken of the points arising under this head.

(*b*) See, generally Darts' V. & P. pp. 242, et seq.

(*c*) An instrument, although worded as an agreement to sell, will be construed merely as an offer to sell, where a postscript is appended stating that "this offer" is to be "left over" till a date fixed. *Dickinson* v. *Dodds* (C.A. 1876) 2 Ch.D. 463. By a telegram asking if the addressee will sell the senders specified real estate, and adding the words: "Telegraph lowest price," a reply merely stating the lowest price, and an answer thereto, agreeing to buy the property at the price named, no contract of sale is constituted, since there is no offer to sell, but a mere statement of the lowest price. *Harvey* v. *Facey* (H.L.E.) [1893] A.C. 552. A paper in which the owner of land recites that another party is to have, for a specified period, the "refusal" of the land, is a mere offer, not an agreement to sell. *Potts* v. *Whitehead* (1869) 20 N.J. Eq. 55. A memorandum to the effect that A "agrees to sell a certain farm to B for a price payable on a certain date does not imply a mere offer to sell, but a completed contract. *Ives* v. *Hazard* (1855) 5 R.I. 25, 67 Am. Dec. 500. An absolute contract of sale, and not a mere option, is evidenced by an instrument reciting that the first party has "this day sold" the subject matter, although the purchase price is not to be paid, nor the deed made till a later date. *Monongah &c. Co.* v. *Fleming*, 42 W. Va. 538; or although the terms of sale are to be complied with in a certain time, or "deposit hereby made will be forfeited." *Haselton* v. *LeDuc*, 10 App. D.C. 379.

(*d*) Where the language of a memorandum given to a real estate agent leaves it doubtful whether the option was to buy as well as to sell, a court will not infer that the agent is entitled to become the purchaser. *Colbert* v. *Shepherd* (1892) 89 Va. 401. A contract giving a person "the exclusive sale of my land for sixty days for $6000, and also providing that he "must get his commission above that," does not confer upon that person an option to purchase the property, but simply makes him the exclusive agent of the landowner for the sale of the property. *Chezum* v. *Kreighbaum* (1892) 4 Wash. 680. The insertion of an agent's name in the instrument granting the option, merely for the purpose of facilitating the sale, and not with any idea of purchasing, does not estop him from claiming his commission as agent. *Russell* v. *Audral* (1891) 79 Wis. 108. Oral evidence to show that the plaintiff was an agent for the sale of land is not objectionable on the ground that it tends to vary a prior written contract by which he had an option to purchase the same land. Such evidence merely has the effect of establishing a distinct contract. *Riemer* v. *Rice* (1894) 88 Wis. 16.