

prevent verbal agreements from being set up. It may be said that *Barklie* was the agent of both parties; and if so, yet the agreement is not such as the statute contemplates. It does not state the number of shares, although the price is stated. This is a material omission. 3. If the agreement is obligatory, yet there is a material variance between the declaration and the proof. The evidence is the sale of seven shares, and the declaration is for two shares. 4. There was no objection that *Barklie* was a broker, and he might have sued for the seven shares. If this action is correct, seven actions might have been brought; and if this could be done, the statute of frauds would be evaded. There is no evidence on the bill of parcels who the seller was. The action ought to have been in the name of *Barklie*.

Harper, for the Appellee. Although in some cases the agent may maintain an action, yet in every such case the principal or owner may sue. There is a double remedy given. The usual mode is for the owner to sue in his own name, and this is done every day. There are many sales where the principal is not known in the transaction, where it is effected by an agent or vendue master. If a note is given to the agent, he may sue, but if there is no note, the principal can sue. This is necessary in all sales by agents. *Barklie* is known to be a broker, and there being no note in this case, the agent, could not sue. It is a special contract, made through the agent, for the respective shares. The shares are not jointly the property of all the owners of shares put in the hands of a Broker for sale, and a joint action could not be maintained. It was a several interest in the whole. If there had been but one share, then it would have been the property of all. This is the case of several persons who happen to employ the same agent to sell their stock. In the proof it appears, that at the same time there was a special contract for other shares sold to the same person. It is a special contract with the plaintiff for two shares, and with *B. Williams* for five shares, neither having an interest in the shares of the other. This is not a contract within the statute of frauds. It is for the sale of shares of stock, and is for a kind of property which is not embraced by that statute. The 17th section of the statute

1810.

Colvin
vs
Williams