in exchange for stock, except on condition that defendants should guaranty that the stock in three years would be worth par, or should be made so by the corporation. For this consideration, defendants agree to make it so, or, in other words, to pay the difference between the cash value of the stock on that day and its nominal value.

On this condition and for this consideration, the plaintiff agreed to convey his land to the railroad company; and, on the faith of defendants' undertaking, he has conveyed it, and accepted, not money, but certain stock, which defendants have agreed to make equal to money by a certain day. The declaration avers, that at the time specified the stock was wholly worthless, and of no value, and the railroad company utterly insolvent, and unable to pay the difference; and that defendants, having full notice of these facts, refuse to comply with their contract.

There is no reason why this contract should be treated as void because of an illegal or immoral consideration. Its conditions require no previous suit to be instituted against any one as principal debtor. The declaration contains every necessary averment: a valid contract, a large consideration paid, and a breach of the contract by defendants; all set forth in proper and technical language.

The plaintiff is therefore entitled to judgment on the demurrer, unless the court below, in their discretion, shall permit the defendants, on payment of costs, to withdraw their demurrer, and plead some good defence in bar.

The judgment of the court below is reversed, and record remitted for further proceedings.

BENJAMIN FORD, PLAINTIFF IN ERROR, *v.* JOHN S. AND HERMAN WILLIAMS.

Where a contract is made by an agent, the principal whom he represents may maintain an action upon it in his own name, although the name of the principal was not disclosed at the time of making the contract; and, although the

contract be in writing, parol evidence is admissible to show that the agent was acting for his principal.

[Mr. Justice Wayne did not sit in this cause.]

This case was brought up by writ of error from the Circuit Court of the United States for the district of Maryland.

Ford lived in New York, and brought an action against John S. Williams & Brother upon the following contract:

Baltimore, *October* 31, 1855.

For and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, we have this day purchased from John W. Bell, and agree to receive from him in all the month of February next, at his option, two thousand barrels Howard street super flour, we paying for the same at the rate of nine dollars per barrel, on the day the said flour is ready for delivery. JOHN S. WILLIAMS & BRO.

Upon the trial in the court below, much evidence was given which it is not necessary to recite in the present aspect of the case. The court, on the application of the defendants' counsel, instructed the jury that, upon the above contract, Ford could not recover. The only question in the case was whether, assuming the contract to have been made for the benefit of the plaintiff, without any disclosure to the defendants of his interest, he was competent to maintain a suit in his own name.

It was argued by *Mr. Brown* for the plaintiff in error, and by *Mr. Nelson* for the defendants.

The case of the New Jersey Steam Navigation Company *v.* The Merchants' Bank (6 Howard, 381) was considered to be decisive of the question.

There is no marginal note in the report of that case, showing that the point was made. The reason was, that there were eight judges upon the bench, only three of whom concurred with Mr. Justice Nelson in the opinion which he delivered, although Mr. Justice Woodbury concurred in the judgment. There being no opinion, therefore, of the court, as such, the

reporter did not think himself authorized to insert in his head note all the points ruled in the opinion delivered by Mr. Justice Nelson.

Mr. Justice GRIER delivered the opinion of the court.

The single question presented for our decision in this case is, whether the principal can maintain an action on a written contract made by his agent in his own name, without disclosing the name of the principal.

It is not necessary to the validity of a contract, under the statute of frauds, that the writing disclose the principal. In the brief memoranda of these contracts usually made by brokers and factors, it is seldom done. If a party is informed that the person with whom he is dealing is merely the agent for another, and prefers to deal with the agent personally on his own credit, he will not be allowed afterwards to charge the principal; but when he deals with the agent, without any disclosure of the fact of his agency, he may elect to treat the after-discovered principal as the person with whom he contracted.

The contract of the agent is the contract of the principal, and he may sue or be sued thereon, though not named therein; and notwithstanding the rule of law that an agreement reduced to writing may not be contradicted or varied by parol, it is well settled that the principal may show that the agent who made the contract in his own name was acting for him. This proof does not contradict the writing; it only explains the transaction. But the agent, who binds himself, will not be allowed to contradict the writing by proving that he was contracting only as agent, while the same evidence will be admitted to charge the principal. "Such evidence (says Baron Parke) does not deny that the contract binds those whom on its face it purports to bind; but shows that it also binds another, by reason that the act of the agent is the act of the principal." (See Higgins *v.* Senior, 9 Meeson and Wilsby, 843.)

The array of cases and treatises cited by the plaintiff's counsel shows conclusively that this question is settled, not only by the courts of England and many of the States, but by this court

(See New Jersey Steam Navigation Co. *v.* Merchants' Bank, 6 How., 381, et cas. ib. cit.)

The judgment of the court below is therefore reversed, and a *a venire de novo* awarded.

DANIEL H. LOWNSDALE AND OTHERS, APPELLANTS, *v.* JOSIAH L. PARRISH.

Congress passed no law in any wise affecting title to lands in the Territory of Oregon until September, 1850; and therefore where a controversy arose, in July, 1850, relating to titles to land, neither party could be said to have a legal title.

Consequently, the amount in controversy could not be ascertained, so as to bring the case within the jurisdiction of this court; and there is no question arising under the Constitution or laws of the United States so as to give jurisdiction.

THIS was an appeal from the Supreme Court of the Territory of Oregon.

The facts are stated in the opinion of the court.

It was argued by *Mr. Gillet* and *Mr. Johnson* for the appellants, and *Mr. Baxter* for the appellee.

The arguments of the counsel were directed chiefly to the merits. On the point of jurisdiction, *Mr. Baxter* gave an account of the singular spectacle exhibited by the American settlers in Oregon, who established a provisional Government amongst themselves, whilst the entire Territory was still in the joint occupancy of the United States and Great Britain. *Mr. Baxter* then referred to the act of Congress passed on the 14th of August, 1848, (9 Stat. at L., 329,) which contained the two following clauses, viz:

"And the existing laws now in force in the Territory of Oregon, under the provisional Government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the Constitution of the United States, and the principles and provisions of this act.