

who is still living. In December, 1907, the plaintiff, William T. H. Fenety, acting with the consent and authority of his co-trustee and mother, entered into negotiations with the defendant for the purchase by him of a portion of the Linden Hall property. Mrs. Fenety, the widow, had continued for some years after her husband's death to reside on this property, but at the time in question she was occupying a house elsewhere in Fredericton and Linden Hall was in the occupation of a tenant. The negotiations in question resulted in an agreement to purchase being made, a memorandum of which was made and signed by the defendant and by the plaintiff William H. Fenety acting for and by authority of his co-trustee and mother. The first question to be disposed of is one of fact. Was there a concluded and complete agreement arrived at between the parties and signed so as to satisfy the Statute of Frauds, and if so what are its terms? The memorandum, of which there was but one copy, which was retained by the defendant, was destroyed by him after he had knowledge and full notice that the plaintiff intended to enforce the contract. The defendant claimed the right to withdraw his offer, as he calls it, when he could not get a conveyance signed by all the beneficiaries, and he says he then destroyed the memorandum as being of no further use. There is, however, in my opinion, no substantial difference between the two versions given of it—one by the defendant, and one by the plaintiff William H. Fenety. The latter in his evidence gives the following as his recollection of it:—

December 13th, 1907.

“Johnston to purchase from Fenety estate property on Brunswick street, 76 x 185, 25 feet to be clear on upper side, 15 feet on lower side; estate to give an unencumbered title; Johnston to hand the estate 25 shares of Toronto Street Railway and 10 shares Fredericton Gas stock—all furniture, including that belonging to Mrs. Roberts, to be removed from the premises. Stock not to be transferred before January, 2nd, 1908.

(Sgd.) L. W. Johnston
Wm. T. H. Fenety.”

The defendant in his answer states the memorandum as follows:—

“Johnston agrees with Fenety estate to exchange 10 shares Fredericton Gas Company stock and 25 shares of Toronto Street Railway stock for a satisfactory deed, free