

This evidence shews that the defendant had selected Mr. Barry as his adviser, but it altogether fails in proving that it was in any way agreed by the plaintiffs that they were obliged as a part of their contract to furnish a title satisfactory to Mr. Barry. They were no doubt to give a good title and one free from encumbrances, but they never agreed that Mr. Barry should be the sole arbiter by whose decision they were to be bound. This evidence shews that at this time the defendant handed this memorandum of agreement and the stock certificates which were to be handed over in payment, to Mr. Barry, in whose hands, as the defendant said, he left the matter entirely. He said nothing whatever as to Mr. Barry's opinion being accepted. It seems strange that if there was so important a condition in the contract as is put forward, that a memorandum written out for Mr. Barry's guidance in closing up the matter should not have been incorporated in it. On his cross-examination on this point the defendant gave the following evidence: "Q. When this memorandum was drawn you had agreed to exchange this stock for that property? A. Under certain conditions? Q. Under conditions of getting a good title? A. Conditions regarding a title satisfactory to Mr. Barry, my solicitor. Q. There was nothing said in the agreement, this memorandum itself, as to it being satisfactory to Mr. Barry? A. Nothing at all. Q. And that memorandum was drawn up to embody the terms of the agreement? A. It was." It seems that the plaintiff and defendant went to Mr. Barry's office immediately after this memorandum was signed and Mr. Barry thus describes what took place: "I remember the occasion. I have no means of fixing the day absolutely, but I have no doubt it was at the time stated, the 21st of December in the year 1907. Mr. Johnston and Mr. Fenety came into my office, my private office. . . . They came into my own office and Mr. Johnston had a package with him in a brown envelope and told me that he was treating for the purchase of the Linden Hall property and wanted me to search the records and investigate the title and see it was satisfactory in every way, and he left the papers with me. I put them in my safe." (The papers were the memorandum of agreement and the two stock certificates in an envelope) . . . "Q. You say Mr. Johnston asked you to complete the matter and see the title was satisfactory, did he? A. Yes, that is what he came to me for, to investigate the title and see that it was in every