and just before the jury were discharged, the judge, who had not up to this time thought of the questions, asked the clerk for them, and, observing that they had not been answered in writing, asked the foreman about them, who stated that the jury had agreed to answer both in the negative. On motion for a new trial or verdict for defendant, it was claimed that the jury, having found no malice, and the occasions of the conversations alleged in the first three counts being privileged, the verdict could not stand. The judge refused the motion, holding that as his charge was clear and distinct as to the necessity of malice in respect of the first three counts, and the jury having found for the plaintiff on them, they must of necessity have found that there was malice, and that, in any event, defendant would only be entitled to have the verdict reduced by the amounts found on these counts, which he had not moved for.

Appeal dismissed with costs, the Court holding that the finding of no malice must be taken, under the circumstances, as applicable only to the fourth count, to maintain which malice was not necessary.

M. G. Teed and *C. A. Peck*, Q.C., for appellant. *J. H. Dickson*, for respondent.

Full Bench.] EDGECOMBE *v.* HUNTER. [Nov. 11, 1898.

Memorandum of agreement to trade at store—Whether sufficient under Statute of Frauds.

In 1888 the plaintiff, respondent, a dry goods merchant, gave the defendant, appellant, an insurance agent, an application for a $2,000 policy on his brother's life at an annual premium of $100, when appellant signed the following agreement: "I hereby agree to take annually so long as I am agent of the Sun Life Assurance Co. on account of the premium of insurance due April 1st each year one hundred dollars on account from the store of Fred. B. Edgecombe, which is the annual premium due each year on policy 18484 on life of H. V. Newcombe." Respondent gave appellant another application for a $5,000 endowment policy on his own life, premium $322.25 in 1889, when appellant agreed he would accept half the premium in cash and take the other half out in dry goods at respondent's store. On this occasion appellant signed the following entry in respondent's day book: "J. B. Gunter, Cr., By premium No. 26282, Sun Life, $322.25. Agreed to take half the premium in goods." In 1895 respondent gave appellant an application for still another policy for $5,000 on his own life, premium $374.45, when a similar agreement was made to that which was entered into in respect of the second policy and a similar memorandum was made in respondent's day book. Appellant purchased goods at respondent's store as agreed down to April, 1897, when he stopped and refused to trade further. In an action in the York County Court for breach of contract respondent recovered a verdict for $220.97.

Held, on appeal, that the agreements were void under the Statute of Frauds.

Appeal dismissed with costs.

Van Wart, Q.C., for appellant. *McCready* for respondent.