

Court, Mr. Barry's opinion upon that point, so far as this transaction is concerned, being conclusive upon both parties. It is true that Mr. Barry was acting for the defendant as his solicitor, in the way usual in transactions of this kind, and that the defendant was relying upon his opinion as to the title. Mr. Barry was, however, not to draw the conveyance, or, so far as I can see, do anything which required this written memorandum for his guidance, however useful it may have been. He certainly was not acting for the plaintiffs in any way. I think the defendant's own evidence on this point is directly at variance with his contention. In his direct examination, after telling of their negotiations as to the terms and their final agreement verbally, which seems to have taken place on the 20th December, 1907, the defendant's evidence proceeds thus:—

“Q. Did you tell him (i.e., the plaintiff Fenety) to come in the next day? A. Yes. Q. About what date was that, the next day? A. Well, as I have it in my mind it was the 21st of December. Q. What took place on that occasion? A. Well, I had the securities with me and prior to his coming there. Q. This was in the assessor's office? A. Yes, and prior to his coming there. I had drawn up a memorandum and when he came in I shewed him the securities and shewed him the memorandum and told him that I intended Mr. Barry should investigate the title and pass upon the validity of the deed they would offer and that I had made a memorandum for Mr. Barry's guidance, which was there, which I would like him to read to see if it was correct and he read the paper, and after he had read it, he asked me if he would sign it, and I told him I dare say he might as well, it would do no harm. Q. Did you sign it yourself? A. I had signed it before he arrived. Q. This was a paper of your own preparation? A. Entirely so. Q. You told him Mr. Barry was to pass upon the title? A. Yes, I did. Q. Did he assent to that or make any objection? A. I presume he assented to it; he raised no objection at all. He asked me if the matter was to be entirely in Mr. Barry's hands thereafter and I said it was. Q. Was anything said as to the title being satisfactory to Mr. Barry or words to that effect? A. Certainly, I told him Mr. Barry would investigate the title and pass upon the validity of the deed. Q. Mr. Barry had been your solicitor for a good many years? A. He has acted for me on a great many occasions.”