

impressions made in dealing with that case, my conclusion is that the judgment appealed against cannot stand.

The evidence is conflicting; the only disinterested testimony is against the claim; the great delay, and other circumstances, make strongly against it; and there is not a scrap of evidence in writing in support of it, although it appears that there should have been some, however slight or important it might be, if the plaintiff's wife's testimony is true.

The case seems to be just one of those which made the passing of such enactments as the Statute of Frauds necessary. . . . That Act is not to be repealed by any Court; if, by merely alleging fraud in one form or another and swearing to it, such enactments can be rendered of no effect, it was idle to have passed them. It would be very regrettable if, by an invented false charge of fraud, the Court should be called upon to treat the case as if there were no such enactment and determine it upon the weight of evidence only—making it only necessary to make a charge of fraud to wipe out an Act passed for the very purpose of preventing fraud and perjury. . . .

[Reference to *Campbell v. Dradborn*, 109 Mass. 130, 143, 145; *Lance's Appeal*, 112 Pa. St. 45.]

But, even if that statute had never been passed, the commonest precaution would require something more than a mere weight of testimony to support a claim of this character, something corroborative in evidence not subject to question as to its truth. In the face of the statute and the fact, which almost every one knows, that such contracts ought to be evidenced in writing, a very clear case should be made.

In this case, as in most cases of the kind, I ask myself: 1. Is the claim supported by probability? 2. Is it supported by evidence in writing, in any form? 3. Is it supported by any indisputable facts? 4. Is it supported by disinterested testimony. 5. Is the parol evidence quite satisfactory and convincing? And, after hearing all that was urged by counsel in support of the claim, and a careful consideration of the report of the trial, I am obliged to answer all these questions in the negative. . . .

I find no great difficulty in interfering with the conclusions of the trial Judge, because I cannot but think he has treated this case as if it were one of mere weight of testimony, and not as one in which the intervention of the statute, as well as the reasons for its enactment, required more than that. The case was not argued before him, and I do not find, in anything said at the trial, any indication that these things were at the moment present to the mind of any one concerned in the trial.