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MERCIER v. CAMPBELL AND THE STATUTE OF FRAUDS.

In our issue of May 2 (ante, p. 273) we published an article written by F. P. Betts (of London, Ont.), in which he discusses the judgment of the King's Bench Division in the case of *Mercier v. Campbell*, 14 O.L.R. 639.

In the July number of the *Law Quarterly Review* (London, England, Sir Fred. Pollock, Bart., D.C.L., editor) there appears a criticism of the above judgment in which the learned editor agrees with the view expressed by Mr. Betts, and strongly dissents from the reasons given for the finding of the court. He concludes by hoping that "the doctrine in *Mercier v. Campbell* will be considered by some court of higher authority." We reproduce the article in the *Law Quarterly*. It reads as follows:—

"The CANADA LAW JOURNAL of May 2 calls attention, rather late, to the law laid down by a Divisional Court in Ontario on appeal from a County Court (whereby the decision was final) in 1907, *Mercier v. Campbell*, 14 Ont. L.R. 639. The Court appears to have decided that a liquidated damages clause annexed to an agreement subject to the Statute of Frauds is collateral and separable, and if the statute is not satisfied the agreement can nevertheless be indirectly enforced by suing for the liquidated damages assigned for its non-fulfilment.

"We agree with the learned commentator that the decision is wrong. The agreement in question was in writing and intended to be formal, but in fact inartificial amateur work. It was for the sale of real estate on a vaguely expressed condition, of which the uncertainty seems to have been the formal defect relied upon. We confess we should have thought it uncertain enough to spoil the agreement even apart from the statute. However, the agreement was in fact admitted in the Divisional Court to be not enforceable by reason of the statute, but otherwise certain enough to support an action. In the body of the same document two short