

FACTS OF THE CASE.

The facts of the case are shortly, as follows:—The defendant, desiring to purchase the hotel of the plaintiff, an agreement was entered into under the hands and seals of the parties whereby it was agreed that the plaintiff should sell, and the defendant purchase the premises in question, and there was added the following clause: “And in case Mrs. Mercier refuses to carry out the sale of the property as aforesaid, she will have to pay to said Campbell the sum of \$300. And in case said Campbell refuses to carry out the part assigned to him in accepting the title to said property, he will have to pay Mrs. Mercier a like sum of \$300.”

Mr. Campbell declining to carry out the agreement to purchase the hotel, Mrs. Mercier sued for the \$300. It was admitted on all hands that the agreement for sale of the hotel was nugatory as being insufficient to satisfy the provisions of the Statute of Frauds, but the Divisional Court (Q.B.D.) held, reversing the judgment of His Honour Judge Constantineau, senior county judge of Prescott and Russell, that the agreement to pay the \$300 on default was nevertheless valid and enforceable.

DISCUSSION.

It will, no doubt, seem to many that this decision has the appearance of running counter to a number of cases, in which it has been held that agreements of this nature cannot be enforced, for the reason that to do so would be to sanction a palpable evasion of the statute.

We quote from Browne on the Statute of Frauds (5th edition), at page 163, “This case (*Carrington v. Roots*, 2 Mees. & W. 248) affords a very clear exemplification of the general rule, which may be here reasserted, that no action can be brought to charge the defendant in any way upon his verbal agreement not put in writing according to the statute. (*Finch v. Finch*, 10 Ohio St. 501; *Culligan v. Wingerter*, 57 Mo. 241; *Smith v. Tramel*, 68 Iowa 488). And it may be briefly illustrated further. If land be sold at auction or otherwise, and no memorandum made, and