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MERCIER v. CAMPBELL AND THE STATUTE OF FRAUDS.

INTRODUCTORY.

A decision of very much more than ordinary importance, and which yet has apparently attracted little, if any, special attention, was added to our store of Ontario cases when the Divisional Court of the King's Bench Division, on the 16th of January, 1907, handed out judgment in the case of *Mercier v. Campbell* (14 O.L.R. 639).

The case touches that prolific source of legal contention and difficulty, the Statute of Frauds. Perhaps, although on many questions arising under it the cases are admittedly in hopeless confusion and contradiction, no enactment has, in a more marked degree, or through a longer series of years commanded the general respect both of the judiciary and the profession, and possibly none has been more jealously guarded by the courts from attacks either open or covert. Thus in *Chater v. Beckett*, 7 T.R. 201, we find Lord Kenyon, C.J., expressing himself as follows: "I lament extremely that exceptions were ever introduced in construing the Statute of Frauds; it is a very beneficial statute, and if the courts had at first abided by the strict letter of the Act it would have prevented a multitude of suits that have since been brought."

So we find that the courts have always been alert to detect and frustrate anything that bore the semblance of an attempt to circumvent or evade the statute; while counsel have always considered it an unanswerable argument to say that if such and such a contention were allowed then the Statute of Frauds might as well be wiped off the statute book.

In *Lord Walpole v. Lord Oxford*, 3 Ves. 410, for instance (where the question at issue related to the validity of an alleged