

View of Divisional Court.

That, however, was not the view of the Divisional Court composed of Falconbridge, C.J.Q.B., Britton, J., and Riddell, J.) before which the above decision came by way of appeal.

That Court allowed the appeal, a lengthy and elaborate judgment on the question at issue being delivered by Mr. Justice Riddell, a shorter one by Mr. Justice Britton, while Chief Justice Falconbridge simply agreed with the views of his colleagues. (*Mercier v. Campbell*, 14 O.L.R., p. 639.)

That Court held that, although the written agreement in question was admittedly ineffective by reason of the Statute of Frauds, there was no reason why the supplemental agreement appended to it should not be perfectly valid and capable of enforcement, and that in point of fact it was so.

View of the Writer.

The opinion of these three eminent jurists would, under any circumstances, be entitled to the utmost possible respect; nevertheless it seemed to the writer that the effect of that judgment was, as we have said, to virtually abolish the Statute of Frauds; in other words that, if that judgment correctly interprets the law on the subject, a transaction of sale and purchase of land may be validly accomplished by word of mouth only, in the direct teeth of the statute, in the following simple manner:—A agrees verbally to sell Blackacre to B. for \$5,000 and B. agrees to purchase the same. Both also agree that, in case either backs out of the bargain, he shall pay the other \$5,000. The first part of the agreement is void as failing to satisfy the statute, but the second, under the decision mentioned, is valid.

It may be objected that our illustrative instance is hardly apposite, as the collateral agreement in question was in writing whereas the collateral agreement in our supposititious instance is verbal, but it must be borne in mind (a point which we fear is too often lost sight of by the profession) that a written agreement, not under seal (except in cases where writing is required by reason of the provisions of some statute), differs in no respect from a verbal agreement. Both are parol agreements and stand on precisely the same plane. It may be worth while digressing for a moment to make this quite plain.