

The application of a different principle by permitting recovery of the amount mentioned in the stipulation, notwithstanding the invalidity of the agreement in law, would be to allow a party in one breath to admit its illegality and in another to maintain its validity.

Not only such doctrine, I apprehend, cannot be upheld upon principle, but so far as I know, it has never received the sanction of any authority. Indeed, quite an extensive search made by me through the English and American reports has failed to reveal a single case affording support thereto.

Browne on Statute of Frauds, s. 122, says: "As a general proposition, however, we shall hereafter see that a verbal contract within the statute cannot be enforced in any way, directly or indirectly, whether by action or in defence."

In *Dung v. Parker* (1873) 52 N.Y. 494 it is held "that a contract void by the Statute of Frauds cannot be enforced, directly or indirectly. It confers no right, and creates no obligation between the parties to it, and no claim can be founded upon it as against third persons. Whatever may be the form of an action at law, if the proof of such a contract is essential to maintain it, there can be no recovery."

This identical language is adopted by Mr. Justice Woods, delivering the judgment of the Supreme Court of the United States in *Dumphy v. Ryan* (1885), 116 U.S. 496. And at page 27, "In order to establish his cause of action, he must put before the court an invalid agreement and prove a breach thereof, and then ask the court for the indirect enforcement of such a contract by giving effect to the stipulation for liquidated damages. This, we repeat, is against principle and authority. I think I can safely say, that no case can be found where a plaintiff has been allowed to succeed in a court of law, where in order to do so, he was obliged to prove and base his claim upon an invalid contract under the statute." To use the language of Eyre, C.J., in *Walker v. Constable* (1798), 2 Esp. 659, 1 B. & P. 306, I may say: "The plaintiff cannot proceed without production of the contract. The defendant's objection is a strictly legal one; the foundation of the action is the contract for the sale of the prem-