sternation of contracting parties, who found their agreements construed for them by the light of rules which to the minor disadvantage of entirely defeating the obvious intent of the contract, added the more serious evil of practically curtailing the acknowledged rights of contracting parties and of being uncertain in their application. Nominally it is perfectly lawful to enforce the performance of an agreement through the medium of liquidated damages, but the result of the decisions is, as we have pointed out, to render it impossible to frame a certain class of agreements so as to enforce payment of the damages stipulated for, while on the other hand some arguments may be easily expressed in such a way as to render them enforceable under the sanction of what is, in point of fact, a penalty.

In allowing parties to name their own liquidated damages, the principle of enforcing agreements through the medium of penalties was admitted; surely then it would be wiser to do away with the vexatious and uncertain restrictions encumbering the exercise of a right which is admitted in all but the name, particularly as these restrictions profess, as we have seen, to be grounded not upon motives of public policy, but only upon a notoriously false presumption as to the intention of the contracting parties. This presumption has now afforded work for the Bar, perplexed the Bench, and exasperated suitors, for two hundred years—a sufficiently long trial in all conscience. In venturing, as we have done, to suggest that written agreements should for the future be construed according to the plain meaning of their contents, we cannot do better than shelter ourselves under the authority of Barons Martin and Bramwell. The former learned Judge, while feeling himself bound by the cases to decide against enforcing a penalty for the breach of the agreement before the Court, observed (*Betts* v. *Burch*, 28 L. J. Ex. 269) that in his opinion "persons being at liberty to enter into any bargains they think fit, the proper mode of ascertaining what the bargain is, if it be in writing, is to ascertain what the expressed meaning is, and carry out that meaning. If a person has made an improper bargain, it would be a warning to others not to enter into such bargains. A great deal of the difficulty in the administration of the law arises from the having to ascertain what is the meaning of agreements that parties have made; but if the Court of Law were simply to ascertain what the parties have expressed, and carry those expressed bargains out, much of the difficulty would be removed. I consider, however, that I am not at liberty to act upon that view with respect to that question." Mr. Baron Bramwell said, "I quite agree with my Brother Martin in thinking the best possible thing would be to let people make agreements and keep to them, according to their words, till they are tired of it, and then you will find out that this little piece of paternal legislation—[*i.e.*, the Act of Will. III., above referred to]—has introduced a great deal of mischief because it has introduced a great deal of litigation."—*Law Magazine.*

CANADA REPORTS.

ONTARIO.

(Reported for the *Law Journal* by H. T. BECK, M.A. Student-at-Law.)

COMMON LAW CHAMBERS.

SNOW V. COLE.

Judgment, setting aside—Alien—Service—Special endorsement.

When a specially endorsed writ was served in Ontario on the defendant who was described as "of the city of Detroit, in the State of Michigan, one of the United States of America,

Held, that final judgment in default of appearance was irregular, and was accordingly set aside.

[May 19.—MR. DALTON.]

This was a motion to set aside a final judgment as irregularly signed the defendant being described in the writ as residing in the United States, but having been served in Ontario.

Osler showed cause. The form under C.S. U.C. cap. 22, sec. 15, expresses the writ to be for service in Ontario. Form A, No. 3, at the end of the act is expressed to be for service beyond the jurisdiction. The first irregularity should have been attacked, and the writ could have been amended if necessary. The defendant was temporarily in Ontario, and might have been described as of the place when served. This is the only irregularity, if any, in the proceedings: *Jackson* v. *Spittall*,