

“Finally, it was insisted by the plaintiff’s counsel that, even if the memorandum does not satisfy the requirements of the Statute of Frauds, yet that the plaintiff may recover on the promise of the defendant to pay \$300 in case of breach of the contract by him. This is an attempt to introduce a most startling principle. It amounts to this; that any contract within the Statute of Frauds, however informal it may be, may be the foundation of an action at law for damages, provided the parties have beforehand fixed and agreed upon what sum shall be recoverable in case of breach thereof. To admit the application of such doctrine, would be, to use the language of a learned judge, in effect to “permit parties to agree that the Statute of Frauds shall not affect their contracts.” *Gantt, J., Ringer v. Holtzclaw* (1892), 20 S.W. 800. Indeed, whether the damages are assessed by a jury or the amount thereof is fixed by the parties, they must always be for the breach of a valid contract. A stipulation in a contract as to liquidated damages, cannot alter the nature of such damages nor indirectly validate a void agreement. Such stipulation must stand or fall with the contract itself. Supposing that the agreement contained a proviso that in case of breach thereof by one of the parties the other shall be entitled to recover damages, surely it could not be contended that such proviso would be of any help to the party suing. But does it alter the nature of such proviso by mentioning the amount that would be recoverable? Supposing also, that I were to hold that the \$300 were in the nature of a penalty, could I proceed to assess the damages if I thought the agreement invalid under the Statute of Frauds? I think clearly not. But by holding that the \$300 are liquidated damages, do I alter my position or the position of the parties, assuming always that the contract is invalid? In an action for breach of contract it is obvious that the plaintiff must prove the existence of a legal contract, the breach thereof, and the damages which he has suffered. Where, however, the amount of the damages is fixed beforehand by the parties, the last proof is dispensed with, but this is the only essential difference there is between a contract containing a stipulation for liquidated damages and one silent as to damages.