To Mr. Campbell, the defendant, the general result must have seemed not a little confusing. When the case was finally disposed of he would be told that the law had condemned him to pay $300 and costs for declining to do what the law at the same time said he was not bound to do. To a layman this would doubtless seem puzzling enough, but it is not the layman alone who will find matter of perplexity in the case. Many aspects of the case present themselves which may well give the lawyer serious food for cogitation. For instance, it might be thought that the agreement by either party to pay the other $300 in case of refusal to carry out the agreement was neither more nor less than an agreement liquidating the damages for breach of the main agreement[2].

And, if so, must the plaintiff not first prove that there is a valid main agreement for breach of which she is entitled to some damages, before having recourse to the subsidiary question as to what amount those damages shall be assessed at? But the statute would obviously step in to prevent the first step, inasmuch as, by reason of its provisions, there was no valid main agreement for breach of which any damages at all could be recovered.

On this branch of the question we quote from the judgment of the learned County Court judge whose judgment is appealed from, which, although unfortunately unreported, we have been privileged to puruse, and which contains an admirable discussion of the points arising under the Statute of Frauds, and a very full collection of the authorities:—

2. In his judgment in *Knapp* v. *Carley*, 3 O.W.R. 940, at page 942, the learned Chief Justice of the Common Pleas Division, speaks as follows:—

"The appellant is, I think, right in his contention that the damages are liquidated. The words of the agreement are, 'we, the said parties hereto, agree to forfeit each to the other the sum of $200 in case either fails to comply with the conditions of the above agreement.'

"The word 'forfeit' is perhaps more consistent with the idea of a penalty than a sum payable as liquidated damages, and the latter term is not used. That is not, however, conclusive either way. The question is one of law, to be decided upon a consideration of the whole instrument, and the principle upon which it is to be decided is simply to ascertain the real intention of the parties. Having regard to the moderate sum named, and the fact, as I take it to be, that the loss which would accrue to the other party from a failure of one of them to perform the agreement on his part, cannot be accurately or reasonably calculated in money antecendently to the breach, I think that the sum which the parties have named should be treated as liquidated."