

paragraphs were added to the effect (the exact words are not material) that either party refusing to perform his part of the agreement should pay the other \$300. The action was brought by the vendor to recover that sum from the purchaser for non-performance. In the County Court the judge said (ex relatione the writer in the CANADA LAW JOURNAL): '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. . . 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.'

"This appears to us very sound, and we find no answer to it in the leading judgment in the Divisional Court, per Riddell, J., save the bare assertion that the promise to pay \$300 is a distinct and alternative agreement. It seemed clear to the learned judge that these reciprocal promises are severable from the body of the agreement of which, as a document, they form part. To us it seems clearly otherwise. Here is no more a separate contract than in the penalty of a bond, if the agreement be read as a whole, as every instrument should be, to arrive at its true intent. No doubt collateral agreements have been held enforceable in many cases; but before such authorities become applicable we must be satisfied that the agreement in question is really collateral, and this is the point about which the court says least.

"A large number of cases are cited, mostly American, which we do not profess to examine. But the English cases most nearly in point are easily distinguished. *Jeake v. White*, 6 Ex. 873, 86 R.R. 527, was really this: 'In consideration that I investigate your title with a view to a loan, will you pay my costs in any event?' *Boston v. Boston*, [1904] 1 K.B. 124 (C.A.), comes to this: 'If you buy Whiteacre I will repay you the purchase money.' In neither case is there any contract for an interest in lands at all; no one is bound to convey or to buy. We hope the doctrine of *Campbell v. Mercier* will be reconsidered by some court of higher authority."