for every possible infringement of an agreement like this. If any such attempt should ever be made there will indeed be plenty of work for the lawyers. What delightfully perplexing questions might arise out of every item in such a schedule! Testators who make their own wills (including even ex-Chancellors) are well known to be a godsend to the lawyers; how much more the parties who should endeavour to schedule every possible infringement of their agreement. Practically, then, the performance of agreements, of which there may be many breaches, cannot be secured by means of penalties, nor even can moderate damages for the breach of such agreements be settled by contract between the parties, except, perhaps, to a very limited extent, for certain specified breaches capable of being accurately defined. For this unsatisfactory result, which has, of late years, not escaped severe judicial comment, it is difficult to say whether Law or Equity is most to blame.

The cases limiting the right of persons to have their intentions carried into effect by calling penalties by the name of liquidated damages were all of them decided at Common Law, nominally under a Statute of William III., instead of under the Rule of Equity as enunciated, though not apparently for the first time, by Lord Macclesfield; but as it is the unanimous opinion of all the Judges who have ever discussed the point that the Statute was only passed in order to import the Equitable Rule into the Courts of Law, and thereby do away with the necessity of going into Equity for relief, and that the same rule does and ought to obtain in both *Courts*, or, as we now say, *Divisions*, it would seem that Equity is the original offender. But then we must recollect that Equity had, in some cases, a good excuse for interference, owing to the very singular circumstance that persons were in the habit of putting their hands to agreements which did not in fact express their real meaning, a state of things for which the technicalities of the Law were presumably responsible.

There is another doctrine connected with the law of penalties which adds to the difficulty of extracting any intelligible principle from the cases. It has been shown that in the case of a complicated agreement involving many possible breaches, a penalty extending to every breach cannot be made enforceable under the name of liquidated damages, and it has frequently been held that an agreement to buy a public-house, even where the agreement contains no complicated stipulations as to indemnity, valuation, &c., comes within the category of agreements to which no enforceable penalty can be attached. Oddly enough, however, though no penalty, either *eo nomine* or under the guise of liquidated damages, can be stipulated for, yet it is perfectly lawful to stipulate that the intending buyer shall, on signing the contract of purchase, pay a deposit, and that in the event of his declining to complete the sale that deposit shall be *forfeited*. It has lately even been held (*Hinton* v. *Sparkes*, L. R. 3 C. P. 161) that under such a clause of forfeiture an action may be brought on an I.O.U. which has been accepted as a deposit instead of a cash payment.

It is difficult to see on what principle the mere fact of an intending buyer having paid, or promised to pay, a deposit on the purchase-money, should render him liable to a penalty for the non-completion of his purchase, which, but for such payment or promise to pay, could not have been enforced.

The fact is that the assumption of the Court of Chancery, ratified to some extent by statute, of the power of construing written agreements, not according to the plain meaning expressed by the parties, but according to what the Court may consider ought to have been their meaning, has resulted, and could not but result, in numerous contradictions and absurdities. It is often difficult enough to put a satisfactory construction on written agreements, even starting with the assumption that the intention of the parties was to express within the four corners of the agreement what they really meant; but if we start with the contrary assumption, that the parties do not mean what they have said, but something else which the Court is of the opinion, under the circumstances, they ought to have meant, we have clearly constructed for ourselves a very pretty puzzle indeed.

We have already observed that we are willing to give Equity the credit of having been actuated by the best of motives