

bell, 14 Ont. L.R. 639. The Court appears to have decided that a liquidated damages clause annexed to an agreement subject to the Statute of Frauds is collateral and separable, and, if the statute is not satisfied, the agreement can nevertheless be indirectly enforced by suing for the liquidated damages assigned for its non-fulfilment. We agree with the learned commentator that the decision is wrong. The agreement in question was in writing and intended to be formal, but in fact inartificial amateur work. It was for the sale of real estate on a vaguely expressed condition, of which the uncertainty seems to have been the formal defect relied upon. We confess we should have thought it uncertain enough to spoil the agreement even apart from the statute. However the agreement was in fact admitted in the Divisional Court to be not enforceable by reason of the statute, but otherwise certain enough to support an action. In the body of the same document two short 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