sible ground on which relief is given. Nevertheless, of late years it has been repeatedly held that the only question to be decided is whether the sum to be paid on the non-performance of an agreement can, in point of fact, be regarded as liquidated damages, or whether it comes under the head of a penalty, and if the latter construction is adopted relief is given as a matter of course, so that in effect the Judges now act on the principle that relief against penalties will always be given. Now the bare proposition that Equity relieves against penalties is somewhat broader than that laid down by Lord Macclesfield; his proposition is that Equity relieves against penalties *which were not originally intended to be enforced*, an important qualification, of late entirely ignored. If relief against penalties is not given on grounds of public policy, but only because of the assumed intention of the parties, there can be no reason why the parties should not declare how their contract should be read, and if they choose to declare that what the Court would otherwise deem to be a penalty shall be considered as liquidated damages agreed upon between them, then, according to Lord Macclesfield and the earlier cases, Equity would have no ground for interference. This would seem to be the view taken by Lord Eldon, who says (*Shackle* v. *Baker*, 14 Ves. 469) that under a covenant upon sale of good-will not to carry on the same business as the purchaser, the parties may proceed to ascertain for themselves what shall be the damages for the breach of it, "and unless they are so awkward as to put that in the shape of penalty instead of liquidated damages, there is a perfect and absolute remedy." Still more to the point are the observations of Chief Justice Gibbs in *Barton* v. *Glover* Holt, N. P. 43), who, after observing that in *Astley* v. *Weldon*, 2 B. and P. 346, (sometimes cited in favour of the view that declarations of intention are not conclusive), there was no stipulation that the damages should be liquidated, said with regard to a clause providing that a sum named to be paid on breach of covenant should be considered as liquidated damages, "In the present case, unless the damages are to be considered as liquidated, and definitely ascertained by the parties themselves, the clause in the agreement means nothing."

It would appear then that in the year 1816, when this judgment was pronounced, the authorities favoured the view that although, in the absence of any express declaration by the parties, the Court would look at the whole agreement and collect therefrom whether a sum to be paid on the non-performance of it should be regarded as a penalty or as liquidated damages, nevertheless the express declaration of the parties should always be conclusive. If the "original intent of the case" is all that is to be looked to, surely it follows, as a matter of course, that this should be so. What the Judges have to decide, according to their own showing, is not whether a certain sum which A. has engaged in certain events to pay to B. is or is not, as a matter of fact, in the nature of a penalty, but whether A. and B. really intended payment of it to be enforced, and an express declaration by them that the sum in question shall be considered as liquidated damages is surely quite conclusive on this head, whatever in point of fact may be the real nature of the payment. The only possible object of christening a penal sum by the name of liquidated damages is to rebut the assumption on the part of the Court of Chancery that penalties are not intended to be enforced. A. and B. enter into an agreement; neither Law nor Equity forbid them from putting any price they please on the non-observance of any part of it, although the price agreed upon may be clearly in the nature of a penalty (*e.g.*, where it is agreed to pay hundreds of pounds in case of a breach that a few shillings would put to rights), provided only that they succeed in making their intention sufficiently plain. Since Equity assumes that penalties are not intended to be enforced, clearly the only way of expressing that Equity is in their case mistaken in its assumption, is to call what is, in fact, a penalty by the name of liquidated damages, and, in accordance with this view, the Judges have over and over again declared that where the parties have put their own price upon *any particular breach* of any agreement, the whole amount may be recovered as liquidated damages, notwithstanding that the breach might be set right by the payment of a much smaller sum, except, perhaps, where it consists merely in the non-payment of a definite