

ises; which contract, in order to be valid, the Statute of Frauds requires that it should be in writing." See argument of Macaulay in *McCollum v. Jones* (1827), Tay. (U.C.) 443.

On the whole, my conclusion is that if the contract sued upon in this action is invalid, as I hold it is, it cannot be enforced either directly or indirectly, in violation of the plain words of the Statute of Frauds, which says that no action shall be brought on such contract. The stipulation as to damages is not divisible from the rest of the agreement; it is one entire contract, and if one part falls, the whole must fall."

REASONS FOR JUDGMENT OF DIVISIONAL COURT.

The considerations which seem mainly to have weighed with Mr. Justice Riddell in deciding this case are as follows:—

1. The view that the citation from Browne on the Statute of Frauds, s. 152: ("A class of contracts . . . namely, those in which a party promises to do one of two or more things, the statute applying to one of the alternative engagements, but not to the others, is sometimes referred to the head of contracts in part affected by the statute . . . It is manifest that of such alternative engagements, no action will lie upon that one which, if it stood alone, could be enforced as being clear of the Statute of Frauds, because the effect would be to enforce the other; namely by making the violation of it the ground of action"), is an erroneous statement of the law, and that the cases on which it rests' are unworthy of credit, as being either erroneously decided or failing to support the proposition for which they are cited.

2. The view that the contract in this case is not entire, but severable.

3. See *Goodrich v. Nichols* (1797) 2 Root (Conn.) 489; *Van Alstine v. Wimple* (1825) 5 Cowper (N.Y.) 162; *Rice v. Peet* (1818) 15 Johns N.Y. 503; *Patterson v. Cunningham* (1825) 12 Me. 506; *Newman v. Perrill*, 73 Ind. 153; *Scott v. Bush* (1873) 26 Mich. 418; *Weatherley v. Choate*, 27 Tex. 272; *Kraak v. Fries*, 21 Sup. Ct. D.C. 100; *Levy v. Bush* (1871) 45 N.Y. 589; *Howland v. Blake* (1878) 97 U.S. 624; *Mather v. Scholes*, 35 Ind. 1; *Lord Lexington, Clark* 2 Vent. 223; *Chater v. Beckett*, 7 T.R. 201, etc.