(ii.) Where the sum named is to be paid as liquidated damages for a breach of the contract:

(iii.) Where the sum named is an amount the payment of which may be substituted for the performance of the act at the election of the person by whom the money is to be paid or the act done.

Where the stipulated payment comes under either of the two first-mentioned heads, the court will enforce the contract, if in other respects it can and ought to be enforced, just in the same way as a contract not to do a particular act, with a penalty added to secure its performance or a sum named as liquidated damages, may be specifically enforced by means of an injunction against breaking it. On the other hand, where the contract comes under the third head, it is satisfied by the payment of the money, and there is no ground for the court to compel the specific performance of the other alternative of the contract. "There are," said Lord Bramwell, in *Legh* v. *Lillie* (1860), 6 H. & N. 165, 171, 158 E.R. 69; "three classes of covenants; first, covenants not to do particular acts, with a penalty for doing them, which are within the 8 & 9 Wm. III., c. 11: secondly, covenants not to do an act, with liquidated damages to be paid if the act is done, which are not within the statute: and thirdly, covenants that acts shall not be done unless subject to a certain payment." It will be convenient to consider the three classes of cases separately.

A penalty (strictly so called) attached to the breach of the contract will not prevent it from being specifically enforced.

"The general rule of equity," said Lord St. Leonards, in *French* v. *Macale*, 2 Dr. & War. 274-5, "is that if a thing be agreed upon to be done, though there is a penalty annexed to secure its performance, yet the very thing itself must be done. If a man, for instance, agree to settle an estate and execute his bond for £600. as a security for the performance of his contract, he will not be allowed to pay the forfeit of his bond and avoid his agreement, but he will be compelled to settle the estate in specific performance of his agreement. (The case referred to seems to be *Chilliner* v. *Chilliner* (1754), 2 Ves. Sen. 528, 28 E.R. 337.) So if a man covenant to abstain from doing a certain act, and agree that if he do it he will pay a sum of money; it would seem that he would be compelled to abstain from doing that act, and, just as in the converse case, he cannot elect to break his engagement by paying for his violation of the contract."

Thus, where two persons entered into articles for the sale of an estate, with a proviso that, if either side should break the contract, he should pay £100 to the other, and the defendant, by his answer, insisted that it was the intention of both parties that, upon either paying £100, the contract should be absolutely void, Lord Hardwicke nevertheless decreed specific performance of the contract to sell. *Howard* v. *Hopkyns*, 2 Atk. 371. In another case, the condition recited a contract for a settlement comprising a sum of money and also real estate: the penalty was double this sum of money, but had no relation to the real estate: the court granted specific performance of the contract embodied in the condition. *Prebble* v. *Boghurst* (1818), 1 Swans. 309, 36 E.R. 402. And where a father, in consideration of his daughters giving up a part of their interest in the property, agreed to make up their incomes arising out of it to £200 a year, and entered into a bond for the payment of such sum as