think that is the position of the case to-day; and, though there may not have been a very excellent job done, yet it is too late now to investigate by way of reference or otherwise. The costs would probably be far beyond the measure of relief that might be awarded the defendant.

The appeal will be dismissed.

HIGH COURT OF JUSTICE.

DIVISIONAL COURT.   OCTOBER 8TH, 1909.

TOWNSHEND v. RUMBALL.

Covenant—Restraint of Trade—Provision for Liquidated Damages Construction as Penalty—Actual Damage for Breach of Covenant—Injunction—Costs.

Appeal by the defendants from the judgment of the County Court of Essex in favour of the plaintiffs in an action for the recovery of $500 as liquidated damages for breach of a contract.

The defendants sold out part of the stock-in-trade of a business carried on by them in a village, to the plaintiffs. The defendants retained some of their stock. They covenanted not to carry on a similar business within five miles of the village for a period of ten years, and also that they would not sell the stock retained to any one except those engaged in the same business in the village, and that they would "close their doors." For any breach the defendants agreed to pay the plaintiffs $500 as liquidated damages.

The County Court Judge found that the defendants had made two sales of hardware in breach of the agreement, and that the plaintiffs were entitled to recover the $500 as liquidated damages.

The appeal was heard by FALCONBRIDGE, C.J.K.B., TEETZEL and RIDDELL, JJ.

A. H. Clarke, K.C., for the defendants.

E. S. Wigle, for the plaintiffs.

THE COURT held that, notwithstanding the use of the words "liquidated damages" in the agreement, the $500 was a penalty, referring to the Encyclopædia of the Laws of England, vol. 4, p. 325, and the cases there cited. They were of opinion, however, that an action lay for the actual damage sustained, and that the plaintiffs had proved damages, which they assessed at $5, and directed judgment to be entered for the plaintiffs for that amount, with an