

HON. SIR JOHN BOYD, C.:—Of all the defences upon the record two only were brought before us on this appeal.

It was contended first that as to the defendant Pattison there was no personal liability, and (2) as to both defendants that the plaintiffs had no right to more than nominal damages and that therefore the \$10 brought into Court was ample satisfaction, even if there had been a breach for which both defendants were liable.

The judgment in appeal is to be upheld on both heads though it should be reduced in extent and though the lines of support may be somewhat different from those of my brother Middleton.

The action is based on an agreement made on 29th June, 1906, set out in the pleadings. By it Mr. A. J. Pattison, president of the Grand Valley R. Co., undertakes and agrees on his own behalf and on behalf of the said Grand Valley R. Co. that he will make or cause to be made through a traffic arrangement with the Canadian Pacific R. Co. an extension of the Grand Valley Railway to St. George. This he undertakes in consideration of the purchase of bonds of the Grand Valley Railway by certain manufacturers and other citizens of St. George. These latter parties were then well known and they had in fact already made applications for bonds up to the extent of \$10,000 which was the amount stipulated for by Mr. Pattison in the negotiations which ended in this agreement. The applications were in escrow and not to be operative till a personal guarantee from the president of the Grand Valley R. Co. had been secured. These applications according to date were one for \$2,000 of bonds on 6th June, 1906, on behalf of the Jackson Waggon Co.; another of the same date for \$2,000 signed by Dr. E. E. Kitchen; one on the 7th June for \$2,000 by the Bell Foundry Co. and one on the 15th June for \$4,000 signed by Dr. Kitchen, J. P. Laurance, E. G. Kitchen, F. K. Bell and W. B. Wood. This makes up \$10,000 but by some adjustment not very clear on the evidence there was a further application by W. B. Wood for \$2,000 on behalf of the Brant Milling Co.

The action is now brought by these plaintiffs W. B. Wood, the Jackson Waggon Co., J. P. Laurance, S. G. Kitchen, E. E. Kitchen, W. B. Wood and A. J. Wood, the latter two carrying on business as the Brant Milling Co. The three companies all doing business at St. George and