

the loss sustained by the breach of the agreement is, I think, practically guesswork: *Williams v. Stephenson* (1903), 33 S.C.R. 323.

There are, no doubt, cases in which it is impossible to say that there is any loss assessable as damages resulting from the breach of a contract; but the Courts have gone a long way in holding that difficulty in ascertaining the amount of the loss is no reason for not giving substantial damages, and perhaps the furthest they have gone in that direction is in *Chaplin v. Hicks*, [1911] 2 K.B. 766. . . .

Sapwell v. Bass, [1910] 2 K.B. 486, as explained by the same Lord Justice in *Chaplin v. Hicks* at p. 797, is not inconsistent with that case. . . .

It was said by Mr. Holman that the agreement makes no provision for the operation of the railway after it should be built; but, if that be the case, the only result is, that another difficulty will be added to those which exist in assessing the damages, as the tribunal which assesses them will have to take into consideration the probability that the railway would have been operated if it had been built.

Upon the whole, I am of opinion that the order of the Divisional Court should be discharged and the judgment of the trial Judge vacated, and that there should be substituted for them a judgment declaring that the respondents are entitled to recover from the appellant and the railway company the damages sustained by the respondents by reason of the breaches of the agreement in the pleadings mentioned, of which they complain, directing a reference to ascertain the amount of the damages, ordering the appellant and the railway company to pay to the respondents their costs up to and inclusive of the trial, and reserving further directions and the question of costs subsequent to the trial, except those of the appeals to the Divisional Court and to this Court, until after the report on the reference, and that there should be no other costs or any costs of any of the appeals to any of the parties; and that the cross-appeal of the respondents in the main appeal should be dismissed without costs.