

DIVISIONAL COURT.

DECEMBER 30TH, 1912.

WOOD v. GRAND VALLEY Rwy. CO. AND A. G. PATTISON.

4 O. W. N. 556

Contract—Agreement to Extend Railway to Town—Breach—Personal Liability of President—Damages—Difficulty of Assessment—No Reason for Withholding.

Action for damages for breach of contract. Plaintiffs were merchants and manufacturers of St. George, a town with poor railway facilities. They entered into an agreement with defendant company and defendant Pattison, its president, to subscribe for \$10,000 of the company's bonds on condition that the company should extend its line into the town. A memorandum embodying the agreement was drawn up and signed, the plaintiffs subscribed and paid for the bonds which were delivered to them, but the promised extension of the railway was never built. Defendant Pattison disclaimed personal liability under the agreement, claiming he merely acted in his capacity as president of defendant company.

MIDDLETON, J., *held*, that the facts shewed that the agreement was intended by all the parties to bind defendant Pattison personally and the fact that the memorandum of agreement was not executed by him in his personal capacity was no defence.

That damages should not be assessed as on a failure of consideration but that difficulty in assessment did not prevent substantial damages being awarded, which under all the circumstances should be fixed at \$10,000.

Choplin v. Hicks, (1911) 2 K. B. 786, approved.

Judgment for plaintiffs for \$10,000 and costs. Any sum realized by plaintiffs in respect to the bonds received under the agreement to be applied in reduction of the judgment.

DIVISIONAL COURT reduced the damages awarded to \$3,980 for the plaintiff companies and \$10 nominal damages for the other plaintiffs, and with this variation, affirmed above judgment with costs.

Wake v. Harrop, 6 H. & N. 774, affirmed; 1 H. & C. 202, approved on question of liability of defendant Pattison.

Appeal by defendants from judgment of HON. MR. JUSTICE MIDDLETON, 22 O. W. R. 269; 3 O. W. N. 1356, awarding plaintiffs \$10,000 damages and costs.

The appeal to Divisional Court was heard by HON. SIR JOHN BOYD, C., HON. MR. JUSTICE LATCHFORD and HON. MR. JUSTICE KELLY.

C. J. Holman, K.C., and T. H. Peine, for the defendant Pattison.

S. C. Smoke, K.C., for the defendant railway.

G. F. Shepley, K.C., and J. Hartley, K.C., for the plaintiffs.