

on the word of Pattison," and varied the judgment of the trial Judge by reducing the damages to \$3,880 and "giving to the other plaintiffs the \$10 paid into Court as nominal damages."

I am, with great respect, of opinion that the mode of assessing the damages adopted by the Divisional Court was erroneous. It is practically giving to the respondent companies judgment for the recovery of the price they paid for the bonds—relief they were entitled to only if the consideration had wholly failed, and I agree with the view of the trial Judge that they were not entitled to that relief, for the reasons which he gives for so holding.

The method of assessing the damages adopted by the Divisional Court was also, I think, open to the objection that it is substantially the same as that which this Court held in *Village of Brighton v. Auston* (1892), 19 A.R. 305, to be an improper one.

Nor am I able to agree with the contention of the counsel for the appellant that the respondents were not entitled to more than nominal damages.

That the motive which led the respondents to purchase the bonds was the desire to secure the extension of the railway to St. George and the traffic arrangements with the Canadian Pacific Railway Company for which the agreement provides, is not open to question; and that they anticipated that important benefits to them individually and apart from those which they would share with the inhabitants of the locality would follow if that should be accomplished, is also beyond question; and there was evidence upon which it was open to the trial Judge to find that there was a reasonable probability that these anticipations would have been realised, measurably at least, if the agreement had been performed.

There was, however, an entire absence of evidence to supply the data upon which the amount of the loss sustained by the breach of the agreement could be ascertained. There was nothing to shew the extent of the business carried on by the respondents at St. George or the amount of "freight" that was shipped to or from their manufactories, or the expense of teaming into or from the stations of the existing railways which served the district in which St. George is situate, nor was there any evidence as to the effect or probable effect in reducing freight rates and those expenses which would have resulted if the agreement had been implemented by the extension of the railway and the making of the traffic arrangements for which it provides.

In the absence of evidence of this character, any estimate of