

ditch constructed by him. From that time until shortly before this action was brought—no complaint was made to the defendants. The land actually generally cultivated by the plaintiff is not more than an acre and one half—and from its situation, it is difficult to determine with any degree of certainty, that there has been any damage caused by anything the defendants have done.

There was evidence that the road ditch for the further benefit of the road should be carried to a sufficient outlet—and that this could be done at comparatively small expense. If the defendants are satisfied of this, I venture to hope that it will be done. At present it may be said that the ditch relieves the higher land of lot 19 from some water that would otherwise flow upon it. That may or may not benefit the higher part of 19. The ditch is certainly of no benefit to plaintiff's land.

Upon the whole case the action must be dismissed—but under all the circumstances it will be without costs. Thirty days' stay.

HON. MR. JUSTICE MIDDLETON.

JUNE 7TH, 1912.

WOOD v. GRAND VALLEY RW CO. & A. J. PATTISON.

3 O. W. N.

*Contract — Agreement to Extend Railway to Town — Breach —
Damages—Measure of.*

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 worth 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 proposed extension of the railway was never built. Defendant Pattison disclaimed personal liability on 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 of 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.

Chaplin v. Hicks, [1911] 2 K. B. 786, approved.

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