Upon the argument it was pointed out that the document was on its face defective, in that, while "parties" are spoken of, there are no parties. But, viewed not as an agreement, but merely as a record of the agreement, I think it goes far to corroborate the plaintiffs' version of what the real agreement was.

Therefore, both on the document and on the oral evidence, I find this issue in favour of the plaintiffs.

Mr. Pattison, some time after the making of this agreement, appears to have sold his interest in the railway to a third party, who undertook to assume and carry out the contracts entered into. Some dispute has arisen between Pattison and his vendee, and the vendee now refuses to carry out the bargain. Mr. Pattison relies upon this as a moral justification for his position, thinking that the contract was one which ran with the office of president.

I cannot at all agree with him in this. His railway company received the $10,000; and, in selling out, he, no doubt, obtained a correspondingly increased price; so that, if he is now called on to make good his undertaking, he ought not to complain.

. . .

The plaintiffs' counsel contended that I should give judgment for recovery of the $10,000, upon the theory that there had been a failure of consideration; the plaintiffs undertaking to return the worthless bonds of the railway company. No case was cited that appears to me to justify the granting of this relief.

I do not think the consideration can be said to have failed: for two reasons. In the first place, the plaintiffs have the bonds; and, although the bonds may not be of great value, they undoubtedly formed part of the consideration. In the second place, I find no case in which money has been ordered to be refunded, as upon failure of consideration, where the failure is a non-performance of a promise. The $10,000 was given by the plaintiffs for the bonds of the railway company and for the promise of the railway company and of Pattison to secure the construction of the road. This promise has not been performed; and the only remedy is damages for its breach.

Particulars were given of the damages which the plaintiffs thought they were entitled to recover, upon an entirely erroneous theory. The true principle is found in the case of Chaplin v. Hicks, [1911] 2 K.B. 786, where the Court of Appeal entirely repudiated the idea that substantial damages should not be awarded where there is difficulty in the assessment. . . .

In this case, the plaintiffs expected to receive great benefit if they could secure the construction of the railway and com-