had been done, agreed with the plaintiffs that the latter should do the remainder of the work under the contract, and should receive ninety per cent. of the amount of every estimate issued till the completion of the work. The written instrument embodying the agreement referred to the contract as an existing one, but the fact was, as was fully shown by all the parties, that at the time of making the agreement the contract had been forfeited, and the Government had taken possession of the works. No advantage was taken by the defendants; the plaintiffs had examined the contract with the Government, and understood as well as the defendants the exact position of affairs; but all trusted to the possession of certain influence by which they hoped to get back the contract, and resume work upon it.

Held, affirming the judgment of the Queen's Bench Division (not reported), that the failure to obtain a restoration of the contract destroyed the whole consideration for each party's agreement or undertaking.

NEVITT v. MCMURRAY.

Sale—Estoppel — Registration of plan — Vendor and purchaser.

M., being the owner of land adjoining lot 40 on registered plan 396, which belonged to B., on the 5th August, 1880, filed a plan, 327, in which he included lot 40 as part of lot M on plan 327. M., the next day, mortgaged lot M to the O. Co., who sold under power of sale to W., taking back a mortgage. The O. Co. and W. had notice from the registry office that M. had no title to the part of lot M otherwise described as lot 40. On the 29th July, 1880, B. had written to M.: "I hereby offer to sell to you lot 40 . . . for the sum of $250, to be paid six months after this date, otherwise this offer to be null. I agree to pay off incumbrances on this when paying off whole"; and M. had written at the foot, "I hereby accept the above offer." This agreement was not carried out within six months; but on the 1st January, 1883, B. sold and conveyed lot 40 to M. for $400, of which $100 was paid in cash, and $300 secured by a mortgage made by M. (at the request of B.) to the plaintiff.

Held, reversing the decision of PROUDFOOT, J., that the original contract between B and M. was not binding on M.—it was merely an option given to M.—and he not having signified his acceptance within six months the land was free at the time he registered his plan and mortgaged to the O. Co.; and the subsequent sale and conveyance was upon a new bargain and contract.

No interest in lot 40 passed by M.'s mortgage to the O. Co., and the subsequent conveyance to M. went to "feed the estoppel" created by M.'s prior mortgage, only to the extent of M.'s interest, which was that of owner of the equity of redemption, or of the lot charged with $300, and it made no difference that the $300 mortgage was taken to the plaintiff instead of to B., the effect being that W. was the owner of lot 40, subject to a first mortgage of $300 in favour of the plaintiff, and to a second mortgage in favour of the O. Co.

B., having by his bargain with M. and the conveyances in pursuance of it, created in M. the status of owner, and in the plaintiff that of mortgagee, was not in a position, nor was the plaintiff, to complain of the registration of plan 327.

CANADA ATLANTIC RY. CO. v. TOWNSHIP OF CAMBRIDGE.

By-law—Assent of electors—Equality of votes—Casting vote—R. S. O. c. 174, s. 52.

The by-law in question was one to raise upon the credit of the defendant municipality money not required for their ordinary expenditure, and not payable within the same financial year, in order to grant a bonus to the plaintiff.

At the voting of the electors upon the by-law, the ballots for and against it were equal, and the clerk of the municipality, who also acted as returning officer, verbally gave a casting vote in favour of it. This occurred in 1880, and therefore before the enactment contained in 46 Vict. ch. 18, s. 321.

Held, reversing the judgment of the Common Pleas Division, 11 O. R. 392, that the Municipal Act, R. S. O. c. 174, s. 152, is not applicable to the case of voting on a by-law, therefore the casting vote of the clerk was a nullity, and the by-law did not receive the assent of the electors of the municipality within the meaning of R. S. O. c. 174, s. 317