W. G. Thurston, K.C., for the plaintiff.
W. N. Tilley, K.C., for the defendant.

LATCHFORD, J., in a written judgment, after setting out the facts, said that it was plain that the case was not one where the plaintiff had so far made default that the consideration for which the defendant gave his promise had wholly failed. Nor, as argued by Mr. Tilley, was it a case where a contract is entered into on the assumption that a particular state of things will exist, and the discontinuance of that state of things occurs without the fault of either party, as in Krell v. Henry, [1903] 2 K.B. 740, and other Coronation procession cases. There was no implied term in the agreement of sale that prohibition would not become the law of the Province, or even that the license for the premises would be renewed.

The case was rather one of several promises on the part of the plaintiff, some of which he performed. If the unperformed promises caused damage, the defendant was entitled to claim that damage. Damage resulted to the defendant not so much from the failure to obtain a lease—that could be had at any time by paying Hollwey for his option—but by failure to procure a lease freed from that option. In 1916, the plaintiff and Hollwey concurred in valuing the option at $2,500. Its existence previously caused a greater loss to the defendant. In 1915, a real estate agent named Porter, acting for an undisclosed principal, was willing to pay $43,000 for the business. He interviewed the defendant—who appears to have been willing to sell—Mr. Haverson, and Hollwey; but, as the latter refused to waive his option, nothing could be done.

It was fair to estimate the damage thus suffered by the defendant at the value which Hollwey placed upon his option in 1914—$6,000.

There should be judgment for the plaintiff for the balance of the purchase-money admitted to be unpaid, $13,522.76, less $6,000, or for $7,522.76, with interest and costs.