

be left to the jury as to W.'s liability." The motion for judgment was refused.

Held, affirming the judgment of the Supreme Court of New Brunswick, that the evidence showed that W. only intended to become indorser of the notes, and there was no evidence to go to the jury of his intention to be a maker. The nonsuit was right, therefore, and should be maintained.

Appeal dismissed with costs.

Earle, Q.C., for appellants.

Currey for respondent.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

[May 10.]

IN RE HUSON AND SOUTH NORWICH.

By-law—Publication—Polling places—Quashing—Discretion.

Notice of intention to submit a local option by-law to the votes of the township electors was given in proper form and for the requisite number of times in a paper published in an incorporated village, the bounds of which did not actually touch, though they came close to those of the township in question. This paper was the nearest paper, it had a large circulation in the township, and was that in which the township council had been in the habit of publishing their notices and by-laws. No paper was published in the adjoining municipality.

One of the polling places was described merely as being "at or near" a certain village. It was shown that this village was a very small one, and that the description was the same as that used in the by-laws appointing the places for holding municipal elections. It was also shown that the poll was held in a place close to that in which the poll had been held in the next preceding municipal election, that place itself having been destroyed.

Another polling place was specifically described by place, lot, and concession, but there was an error in the number of the concession.

It was shown that all the proceedings had been taken in good faith and that no one had been misled by any of these inform...

Held, therefore, reversing the judgment of SIR THOMAS GALT, C.J., that the court might, in the exercise of its discretionary power so to do, refuse to quash the by-law in question.

Titus for the appellants.

DuVernet for the respondents.

VILLAGE OF BRIGHTON v. AUSTON.

Damages—Municipal corporations—Bonus—Repayment—Consideration.

The plaintiffs agreed to give to defendants a bonus of \$1,000, in five equal consecutive annual instalments of \$200 each, in consideration of their establishing a factory and working it for ten years. The agreement provided that the annual payments were to cease if the defendants ceased to carry on business within five years, but there was nothing in the agreement as to cesser after that time. The defendants carried on business for six years, obtained the full amount of the bonus, and then closed their factory. It was admitted that no specific damages could be proved.

Held, that the plaintiffs were not entitled to repayment of four-tenths of the bonus as upon a failure of consideration, but that they were entitled to nominal damages at least, and, under the circumstances, to the costs of the action.

Judgment of SIR THOMAS GALT, C.J., affirmed, MACLENNAN, J.A., dissenting.

W. R. Riddell for the appellants.

J. S. Fullerton, Q.C., and *H. F. Holland* for the respondents.

FLEMING v. CITY OF TORONTO.

Municipal corporations—Local improvements—By-law.

A general by-law may be passed providing the means of ascertaining and determining what real property will be immediately benefited by any proposed work or assessment, the whole cost of which is to be assessed upon that property, but such a general by-law is not sufficient in the case of local improvements or construction of bridges, the whole cost of which the council deem it inequitable to raise by local special assessment.

Judgment of STREET, J., 20 O.R. 547, affirmed.