Even as mere indorsees for collection, the plaintiffs would have a banker's lien upon the note and would be holders for value under sub-sec. 2 of sec. 54, so long as their customer was in their debt, i.e., so long as there was a debt presently payable owing by their customer; but, if the note were not pledged as collateral security, the plaintiffs could not claim to be holders for value in respect of a mere liability: Grant, 6th ed., pp. 89, 215, 306; Hart, 2nd ed.. p. 240. . . . Halsbury's Laws of England, vol. 1, sec. 1256, p. 623, citing Bower v. Foreign and Colonial Gas Co., 22 W.R. 740, and Jefferys v. Agra and Masterman Bank, L.R. 2 Eq. 674.

What is the result of the fact that subsequent to the alleged failure of consideration between the original parties in July, 1908, Fox's direct indebtedness to the plaintiffs was cleared off (in November, 1908)?

If the plaintiffs are holders for value in respect of the indebtedness subsequently arising, it would seem to be on the theory that the note may be regarded as repledged to the bank after it was overdue. Even on this hypothesis, the Chancellor has held that there is no equity attaching to the note and that the bank may recover. This might be so if it had been proved that the note was deposited, prior to the maturity, as collateral security for a running account, even if there were intervals during which there was no indebtedness: Atwood v. Crowdie, 1 Stark. 483, cited in Chalmers, 7th ed., p. 94; but the plaintiffs have failed to prove that at any period the note was deposited as collateral security.

I think that the plaintiffs are in no better position than if they took the note for the first time when Fox became again indebted to the bank after the 24th November, 1908. Immediately prior to that time, they were mere holders for collection, subject to any defence that might be set up against their customer.

Under sec. 74 the plaintiffs may sue in their own name. But their right to recover is that of holders taking the note when it is overdue. The note then comes to the indorsee "disgraced," as Lord Ellenborough said in Tinson v. Franers, 1 Camp. 19. . . .

[Reference to Chalmers, 7th ed., pp. 107, 108, 130; Holmes v. Kidd, 5 H. & N. 775, 28 L.J. Ex. 112; Ching v. Jeffery, 12 A.R. 432, 435-6.]

The note was given for a share in a business, and . . . the termination of the partnership, if it results in a failure of consideration, is a defence to the action on the note.