way they mitigated the damage that they would have suffered had they been held to their contract and had the defendant defaulted in his.

The trial Judge, in estimating the plaintiffs' damage, took into consideration the dealings between the Diamond company and the plaintiffs, and came to the conclusion that these dealings had, in their result, relieved the plaintiffs from all the loss that they might otherwise have suffered by reason of the defendant's default, and that the defendant was, in the circumstances, entitled to the benefit of these transactions. That conclusion was right. See British Westinghouse Electric and Manufacturing Co. Limited v. Underground Electric Railways Co. of London Limited, [1912] A.C. 673.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT. JUNE 14TH, 1918.

FOX v. PATRICK.

Promissory Note—Accommodation Maker—Surety—Liability to Endorsee who Advanced Money upon Security of Note—Note Made Payable to Bank—Title to Note—Holder in Due Course—Bills of Exchange Act, sec. 70—Estoppel.

Appeal by the plaintiff from the judgment of MIDDLETON, J., 13 O.W.N. 400, dismissing the action without costs.

The appeal was heard by MACLAREN AND MAGEE, JJ.A., KELLY, J., and FERGUSON, J.A.

T. G. Meredith, K.C., for the appellant.

P. H. Bartlett, for the defendant, respondent.

MACLAREN, J.A., read a judgment in which he said that the judgment appealed from should be affirmed on the ground that the case was governed by sec. 70 of the Bills of Exchange Act, R.S.C. 1906 ch. 119, which says: "When an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which had the person from whom he took it."

The note in question was dated the 25th August, 1909, and was made payable to the order of the Standard Bank, Lucan, two months after date, so that it became due on the 28th October,