The case of *Oldershaw* v. *Holt*, 12 Ad. & E. 590, is instructive on this point. That was an action for breach of a contract contained in an agreement for a building lease for 99 years. The rent was to be £115 a year and the lessee contracted to build houses, and in default that the plaintiff might re-enter. Before the expiration of 5 years he made default and the plaintiff re-entered and subsequently re-let the premises for the residue of the former tenant's term at a peppercorn for the first year, £70 for the second, and £140 for the rest of the term. The plaintiff claimed the difference between the rent he was to have received from the defendant and the rent he was to receive for the first two years under the second lease. It was admitted that the new lease would ultimately be more advantageous than the first if the tenant continued solvent and fulfilled his engagement. The jury in these circumstances gave a verdict for the defendant, and the court refused a new trial, holding that the jury might properly take into account in estimating the damages the increased rent secured under the second lease. In the recent case of the *British Westinghouse Co.* v. *Underground Ry.* (1911) 1 K.B. 575, the Court of Appeal held that it is the duty of a contracting party to minimize the damages he sustains by reason of a breach of a contract, and that he may recover an outlay which he incurs for the purpose of diminishing, and which in effect does diminish the damages.

The principle on which both these cases proceed is that the actual loss is what is recoverable and that if the plaintiff does, as a matter of fact, save himself from loss he cannot recover substantial damages from the defendant. This principle was recognized and acted upon by the Judicial Committee of the Privy Council in *Eric County Natural Gas Co.* v. *Carroll* (1911) A.C. 105.

Clute, J., quotes the following passage from Halsbury's Laws of England: "In an action for the non-delivery of shares the measure of damages is the difference between the contract price and the market price at the date of the breach."

In the case before the court, however, the action was not for non-delivery, but for non-acceptance, which is a vitally different