from what he was called upon to do under his contract, made no essential difference. If what he did was the consequence of the situation caused by the breach of contract, and resulted in minimising the loss caused thereby, and was not something independent of it, in the sense that it might have happened if there had been no such breach, the other party was entitled to the benefit of it in mitigation of damages: Richardson v. Hartmann (1893), 68 Hun (75 N.Y. S.C.) 9; Lee v. Hampton (1901), 79 Miss. 321.

The mode adopted and the difficulties encountered were really no concern of the other party. They were the respondent's own affair, and merely a means to an end. He did not require to embark on the venture; but, having done so, he was bound to admit that he had in fact suffered no loss by so doing.

The appeal should be allowed with costs. The respondent was in strictness entitled to nominal damages, and should, if he desired, have judgment for them, with such costs as would be taxed if he had sued in a Division Court, with a set-off to the appellants. If the respondent does not take judgment in that form, the action will be dismissed with costs.

Appeal allowed.

FIRST DIVISIONAL COURT. JANUARY 12TH, 1917.

*RE CLARK AND TOWN OF LEAMINGTON.

Assessment and Taxes—Business Assessment—Unlicensed Hotel —"Business"—Assessment Act, R.S.O. 1914 ch. 195, sec. 10 (1) (j), (11).

Appeal by J. C. Clark from an order of the Judge of the County Court of the County of Essex (Dromgole, Co.C.J.), dismissing Clark's appeal from the decision of the Court of Revision for the Town of Leamington confirming a business assessment of $800 in respect of his hotel in Leamington. The County Court Judge, after dismissing the appeal, stated a case for the opinion of this Court.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

E. C. Awrey, for the appellant.

J. B. Clarke, K.C., for the town corporation, respondents.