

That onus had not been discharged.

The mortgage for \$4,000 was the property of Julia; and Samuel was in no stronger position by reason of his obtaining a release of the equity.

The plaintiff must do equity by paying to the estate of Samuel Softley \$100 with interest thereon from the dates upon which he paid the two sums of \$50.

There should be judgment declaring that Julia Softley or Hart was the owner of the lands at the time of her death, and that the plaintiff as her devisee is entitled to the same, subject to a charge of \$100 and interest in favour of the estate of Samuel Softley.

Costs of all parties (those of the executors of Samuel Softley as between solicitor and client) to be paid out of the property in question.

KELLY, J.

APRIL 21ST, 1920.

SAMUELS v. BLACK LAKE ASBESTOS AND CHROME
CO. LIMITED.

Contract—Delivery of Ore—Breach—Refusal to Complete Delivery—Excuses for Non-delivery—"Pinching out" of Ore—Failure to Prove—Contingencies—Increased Cost of Production—Impossibility of Performance—Extension of Time for Making Deliveries—Assessment of Damages at Date of Refusal to Make Further Deliveries—Measure of Damages—Contract-price—Market-price at Extended Date Greater than at Date of Original Breach.

Action for damages for breaches of two contracts by the defendants to deliver to the plaintiffs a large quantity of Canadian lump chrome ore.

The action was tried without a jury at a Toronto sittings.

A. W. Anglin, K.C., and R. C. H. Cassels, for the plaintiffs.

Hamilton Cassels, K.C., and R. S. Cassels, K.C., for the defendants.

KELLY, J., in a written judgment, after setting out the facts, said that at the trial stress was laid upon evidence intended to shew that the reason for the defendants' failure to live up to the contracts was the "pinching out" of the ore in their mines. This the learned Judge finds not to have been the fact. Ample for these contracts would have been produced if the defendants had made reasonable efforts to that end. To obtain the required