F. E. Hodgins, K.C., and W. R. Wadsworth, for the defendant.

R. R. McKessock, K.C., and W. N. Tilley, for the plaintiff.

MOSS, C.J.O.:—There is nothing involved in this appeal but a question of fact. The plaintiff alleges an agreement on the part of the defendant, which, if true, has in it no element of illegality. The claim is that the defendant, the owner of the greater proportion of the shares in a mining company, and greatly interested in its properties being proved to be productive and valuable, desired to make a test by submitting a mill run of ore for reduction at the Kingston School of Mines, and, being unable to procure or advance the moneys needed for that purpose, applied to the plaintiff and two other persons to advance the necessary funds, and by way of consideration offered and agreed to make over 10,000 shares of the capital stock of the company belonging to him to the plaintiff, and that the plaintiff and his two associates advanced the moneys, and the mill run of ore was got out and sent to the School of Mines.

The plaintiff now claims that he performed his part of the agreement; and the learned trial Judge has found the agreement and the plaintiff's performance of his part of it to be proved as alleged by the plaintiff. There is a direct conflict of testimony; but clearly the preponderance, not only of verbal evidence, but of the probabilities, supports the plaintiff's case. Taking the whole case together, there appears to be no good reason for interfering with the finding of the learned trial Judge. There is not any doubt that the defendant wished to obtain the submission of the mill run of ore to the School of Mines, and that he was without funds with which to procure it to be done.

It is equally clear that, as a fact, the funds were actually advanced by the plaintiff and his associates, and the result was obtained which the defendant was desirous of bringing about. His version of the means by which the funds were procured or rendered available, and the plaintiff and his associates recouped, he failed to establish by satisfactory proof.

The result is, that the judgment appealed from should stand and the appeal be dismissed with costs.

MEREDITH, J.A., agreed in the result, for reasons stated in writing.

GARROW, MACLAREN, and MAGEE, JJ.A., also concurred.