cases dealing with impossibility of performance—to dispose not only of the contention that the alleged deficiency of ore was due to a cause beyond the reasonable control of the appellants within the meaning of the exception in the contract, but also of the contention that there was in fact an absence of ore sufficient to fill the contracts in question.

But the contention that the appellants were entirely relieved from performance of their contract because the basis upon which it was entered into was radically changed, and that they had to expend $80,000 and entirely reorganise their methods before they could produce ore in commercial quantities, was strongly pressed. The appellants, however, were not the sole producers of this ore, apart altogether from the fact that they had disposed of ore to other persons, diverting it from the respondent's contracts. They could, by paying wages as high as they were compelled to pay to their asbestos workers, have compassed the production of the article in commercial quantities. The doctrine of frustration depends upon implied contract, and it is said that "no such condition should be implied when it is possible to hold that reasonable men would have contemplated the circumstances as they existed and yet have entered into the bargain expressed in the document:" Scottish Navigation Co. Limited v. W. A. Souter & Co., [1917] 1 K.B. 222, 243; Bank Line Limited v. Arthur Capel & Co., [1919] A.C. 435. Here the parties knew the situation, were aware of the possibility of pits pinching out and of the existence of other sources, and might very well have made the contracts.

The appellants, therefore, had not shewn that performance was impossible owing to pinching out or that the expenditure which they made was, in the circumstances, absolutely necessary to put them in a position to fulfil or substantially complete their contracts, or that any implication should be added to the written contracts in case of their performance, in the events which had happened.

The learned Judge did not wish to be understood as expressing the opinion that expenditure or the adoption of new methods would alone bring the appellants within the principle of the cases cited where the performance of the contract was held to have because impossible. On the question of so-called commercial impossibility, see Tennants (Lancashire) Limited v. C. S. Wilson & Co. Limited, [1917] A.C. 495; and Blackburn Bobbin Co. v. T. W. Allen & Sons Limited, [1918] 1 K.B. 540, [1918] 2 K.B. 467.

The decision should be against the appellants on all the grounds raised by them in opposition to the liability imposed by the judgment.