

The plaintiff's damages should therefore be assessed at \$737.50, from which should be deducted the \$175 awarded to the defendant on his counterclaim, and the judgment should be varied by reducing the damages to \$562.50, and the judgment should be affirmed with that variation—the plaintiff's cross-appeal to increase the amount of damages being dismissed.

There should be no costs of the appeal or of the cross-appeal to either party.

*Judgment below varied.*

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FIRST DIVISIONAL COURT.

DECEMBER 30TH, 1920.

\*SAMUEL 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—Frustration—Increased Cost of Production—Expenditure—Adoption of New Methods—Impossibility of Performance—Extension of Time for Making Deliveries—Quantum of Damages—Measure of Damages—Conduct of Purchaser—Duty to Minimise Loss—Purchases Made by Purchaser from Other Persons—Allowance for, in Estimating Loss—Reference to Assess Damages—Costs.*

Appeal by the defendants from the judgment of KELLY, J., 18 O.W.N. 149.

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

R. S. Cassels, K.C., for the appellants.

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

HODGINS, J.A., reading the judgment of the Court, said, after stating the facts, that, beginning in September, 1918, the appellants spent \$80,000 up to July, 1919, with the result that under new methods they retrieved in development work 600 tons up to July, 1919, and afterwards got out 1,000 to 1,200 tons of high grade ore and some low ore, or in all about 2,000 tons at an average of 30 per cent.

This result seemed—subject to the further ground that the great expense to be incurred brought the appellants within the