

Any process the purpose of which is the separation of the valuable mineral from the dross is a concentrating process, and the building or plant used for that purpose is, within the meaning of sub-sec. 4, a concentrator.

The appeals should be dismissed with costs.

MAGEE and FERGUSON, JJ.A., agreed with MEREDITH, C.J.O.

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

Appeals dismissed with costs.

FIRST DIVISIONAL COURT.

JANUARY 31ST, 1921.

MERRILL v. WADDELL.

*Damages—Breach of Warranty—Sale of Hay—Quantum of Damages
—Evidence—Finding of Trial Judge—Appeal.*

An appeal by the defendant from the judgment of KELLY, J., ante 105.

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

F. H. Thompson, K.C., and J. C. Makins, K.C., for the appellant.

W. S. Brewster, K.C., for the plaintiff, respondent.

FERGUSON, J.A., reading the judgment of the Court, said that the judgment of Kelly, J., was pronounced on a re-trial of the action, as to the quantum of damages only, pursuant to an order of this Court of the 9th June, 1920 (47 O.L.R. 572). The plaintiff's claim was for damages for breach of warranty on the purchase and sale of 9 car-loads of hay. On the first trial the plaintiff was awarded \$1,647; on the second, \$1,115. The trial Judge had not stated how he arrived at the amount of his award.

It was contended for the appellant that as to 4 of the car-loads there was not before the trial Judge evidence on which he could find damage; that if, in arriving at the amount of his award, the trial Judge did not allow anything for these 4 car-loads, then he must have been of opinion that the hay in the other 5 cars had no value, and made his award accordingly; that the evidence in