

ates \$2 per ton for the ore mined until payment should be made thereout, and out of the proceeds of the sale of certain stock of Nickel Alloys Company of the sum of \$80,000. Wightman was also to pay to the other parties to the agreement \$5,000 out of each \$50,000 of stock of the Nickel Alloys Company sold. Coffin and his associates who made the agreement agreed that the deeds of the property should "remain in escrow to be released" to Wightman as soon as he should have completed the payment of the \$80,000. It was also provided that "the party of the second part as a part of his duties herein, in order to hold the parties of the first part agrees to have the said Nickel Alloys Company legally bind itself to the party of the first part to have all the duties of the party of the second part herein fully performed."

At the trial it was admitted that defendants went upon the property prior to the commencement of the action under a right which they claim to have acquired by written agreement from Coffin and his associates; and while admitting this to be so, plaintiffs' counsel did not admit that this latter agreement (which was not produced at the trial) had any effect.

Plaintiffs set up that on February 14th, 1911, Wightman agreed to transfer to his co-plaintiffs his title and interest to these lands, and that on February 14th, 1912, he executed to them an assignment of his agreement of January 28th, 1911. They also claim that they thus acquired the exclusive right to the property and to mine upon it.

I have grave doubts as to the agreement being sufficient in form as to have given Wightman such exclusive right, but even if it had such effect, another circumstance in connection with it is fatal to plaintiff's claim.

The agreement was clearly intended to be made by all the persons who were owners of the property at that time, namely, Coffin and his five associates; four only entered into the agreement, the other two for the reasons stated above not having executed it, and it is not shewn that it was ever brought to Eastbrook's attention.

On this ground I am of opinion that the owners of the property were not bound.

In Halsbury's Laws of England, vol. 7, p. 336 it is laid down that "where a promise is intended to be made by several persons jointly, if any of such persons fail to execute the agreement there is no contract, and no liability incurred