

sonally of any breach of undertaking, but that what I wanted to make clear was that the undertaking to deliver the transfers was absolutely unconditional so far as Wiley and the Trust Company alone were concerned. I suggested that you send the papers with such a letter as you might see fit to write. Since then I have your letter enclosing the transfers. All I can say is that I will hold the transfers unregistered, subject to the terms of the undertaking that I have. I know of no arrangement by which Mr. Wiley is entitled to any consideration for these transfers, but in taking this stand I wish to state that the position of the parties is not to be prejudiced merely by the transfer or possession of the transfers from you to me."

No answer was made to this letter, and it must be taken that E. acquiesced in the terms of this last letter.

Subsequently Warren took advice as to what he should do, in view of the position of the syndicate, the subscribing members, who looked to the Trusts & Guarantee Co. to do what they could to protect them, and counsel advised that the transfers should be registered. Apparently without any reference to Wiley or his solicitor, the company registered the transfers about November, 1907, and thereupon further registered transfers from the company to J. J. Warren (their manager), and from Warren to Stockdale, Stockdale having a miner's license and the transfers being for domestic reasons—then Stockdale executed a declaration of trust in favour of the "Syndicate." May 29th, 1909, Wiley demanded a reconveyance, claiming that the transfers were held under the terms of E.'s letters of March 7th, 1907. Securing no reply to that letter or to another of June 7th, an action was brought, 2nd October, 1909, by the executors of A. M. Wiley against The Trusts & Guarantee Company, J. J. Warren, Stockdale and Cobalt Nipigon Syndicate—pleadings were noted, closed 3rd December, 1909, against Cobalt Nipigon Syndicate in default of defence—and the case came on for trial before Mr. Justice Teetzel, March 14th, 1912. That learned Judge's conclusions are to be found, 3 O. W. N. 997. The defendants (other than the syndicate) now appeal.

It seems to me too clear for argument, that for valuable consideration Wiley had undertaken to transfer the property to the Trusts & Guarantee Co.—that at a certain stage he desired to get away from his definite undertaking—that his solicitor advising a delivery as in escrow, an attempt was