

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

J. W. Bain, K.C., and M. Lockhart Gordon, for the defendants, appellants.

I. F. Hellmuth, K.C., and W. J. Elliott, for the plaintiffs, respondents.

HON. MR. JUSTICE RIDDELL:—At about the time of the height of the Cobalt “boom,” one Campbell came to Warren, the manager of the Trusts & Guarantee Co., deposited a considerable sum of money with the company and stated to Warren his method of doing business. This was to acquire a Cobalt property, form a syndicate, obtain from or through the syndicate sufficient money to develop the property, and then sell or work it for the benefit of the syndicate. A. M. Wiley (now deceased) and Campbell both told Warren that Campbell had bought certain properties from Wiley and paid for them. It was necessary for Campbell to get the public interested in his scheme and to get money from the public: and this necessitated advertising.

It was arranged that the Trusts & Guarantee Co. should be trustees for the syndicate, i.e., of course, for all those who were to have an interest in the proceeds of the sale or working of the property. Warren says: “The question in my mind was as to whether I would insist upon the transfers being actually executed by Wiley, and recorded before permitting the Trust Company’s name to be used in connection with the advertising; and upon an undertaking being give and Mr. E.’s assurance being given that everything was all right, I agreed to let the advertisements go just as if we had the transfers.”

The undertaking was as follows: “To the Trusts and Guarantee Company, Limited, . . . I, A. M. Wiley, owner of the following properties (setting them out), agree that I hold the same in trust to be conveyed to you for the Cobalt Nipigon Syndicate Registered, and that I will execute proper conveyances vesting the title in you as soon as accurate descriptions can be obtained from Port Arthur, or within ten days from the date hereof.” This was signed, sealed, and delivered by A. M. Wiley, November 22nd, 1906. Mr. E.’s assurance referred to was as follows. Mr. E. drew up the undertaking. Warren did not know Wiley and asked