

HON. MR. JUSTICE TEETZEL (10th April, 1912):—As between the plaintiff and the defendants, the company, Warren and Stockdale, the right of the plaintiff to a reconveyance of the properties in question rests upon the letter of March 7th, 1907, from plaintiff's solicitors to the defendant company and the reply thereto of the same date.

The first letter enclosed the transfers and expressly states that they are only deposited with the company in escrow until the consideration money is paid, and that "if you cannot hold these transfers on the above conditions kindly return the same to us, as they are left with you on no other conditions." In the letter from defendants' manager to plaintiffs' solicitors acknowledging receipt of the transfers, he says, "All I can say is that I will hold the transfers unregistered subject to the terms of the undertaking I have." (This has reference to an undertaking, dated November 22nd, 1906, by the testator whose executors the plaintiffs are, to execute the transfers to defendant company as trustees for the Nipigon Syndicate). "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 of possession of the transfers from you to me."

Instead of holding the transfers "unregistered," and so that the "position of the parties is not to be prejudiced merely by the transfer of the possession of the transfers from you to me," as undertaken in the last recited letter, the company shortly afterwards without the knowledge or consent of the transferor or his solicitors, registered the transfers, and conveyed the properties to one of its officers in trust, who afterwards conveyed them to another officer in trust. These officers are both defendants and the plaintiffs' claim is for a reconveyance.

I think upon a proper construction of the letters above recited, and there being no pretence that the consideration for the transfers was paid, the plaintiffs are entitled to judgment directing the defendants to reconvey to them the lands described in the transfers free from any incumbrance done or suffered by them, but without prejudice to any action the defendant company may be advised to bring upon the above-mentioned undertaking.

The defendants must also pay the costs of this action.