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DIVISIONAL COURT.

JUNE 24TH, 1912.

WILEY v. TRUSTS AND GUARANTEE CO, ET AL.

3 O. W. N. 997, 1494.

*Contract — Construction — Correspondence — Transfers of Land
Held in Escrow — Undertaking not Registered — Action for
Reconveyance.*

Action by plaintiffs, executors of one Wiley, to compel defendants to reconvey certain mining properties to them. Defendants as trustees for a certain syndicate, and for those of the public who should become "special members" thereof, had taken transfers of the properties in question to themselves as such trustees pursuant to an unconditional undertaking of Wiley to give such transfers. Later, Wiley claimed that certain correspondence between the parties, with reference to the implementing of his undertaking, had superimposed thereon certain conditions which had not been fulfilled and that, therefore, he was entitled to a reconveyance of the properties.

TEETZEL, J., gave judgment for plaintiffs as prayed, with costs, without prejudice to the right of defendants to bring action in respect of the original undertaking.

DIVISIONAL COURT varied above judgment by directing a sale of properties by Court, payments to be made of proceeds: (1) to defendants, their costs of action and appeal as between solicitor and client; (2) their expenses, commission, etc.; (3) costs of all parties to reference; (4) remainder to be divided 40% to "special members" of syndicate, and balance to plaintiffs, or at plaintiffs' option on purchasing interests of "special members" and costs, expenses, commission, etc., of defendants, as above, they were to become entitled to a reconveyance of the properties.

If plaintiffs should not elect to take either alternative, appeal to be allowed and action dismissed, both without costs.

An appeal by the defendants from the following judgment.

I. F. Hellmuth, K.C., for the plaintiff.

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