

by those who have executed the agreement." In making this summary of the law, the author refers to a number of leading cases on the subject (some of which on the argument were cited by counsel for the defendants), but apart from this I find the further fact that even if the agreement had been binding it was put an end to in February, 1912.

Up to that time Wightman had not paid anything to Coffin or his associates out of the proceeds of the mining operations nor in respect of the sale of stock in the Nickel Alloys Company, though he had in the meantime sold a considerable amount of that stock; nor had he procured from the Nickel Alloys Company anything to bind that company for the performance of his obligations as contemplated by the agreement.

This was the state of affairs about the end of January and the beginning of February, 1912, when Coffin and his associates, Flint, Parsons, and Riley, who had signed the agreement, complained of Wightman's default and declared their intention of repudiating the agreement and considering it at an end.

Wightman with one Gilder who was associated with him met Coffin and his three associates mentioned above, in Boston, and on the evidence of what took place at that meeting I find that they then agreed to the cancellation and rescission of the agreement. Wightman was evidently moved to this course by his failure to carry out several important and essential terms of the agreement.

Following this rescission and on the same day negotiations were opened up by Wightman, or on his behalf with these other parties with the object of making a new agreement, and he then made a proposal which was to be taken into consideration by them.

Wightman and Gilder then return to New York, but before the other parties had sent a formal reply to the proposition for a new agreement, the Nickel Alloys Company—through its secretary—forwarded to them a copy of a resolution of that company passed on February 14th, 1912, purporting to ratify the contract of January 28th, 1911, which it declared had been accepted on February 14th, 1911, by the stock-holders of the plaintiff company. What right that company had to accept at that time is not made clear. In view of the fact that the written assignment by Wightman to his co-plaintiffs, and which was produced at the trial,