It is, and was, the duty of the Trusts & Guarantee Company to set up and actively assert their claim to the land and conveyances as such trustee—and they also had a legitimate claim for expenses, commission, etc., as such trustees. The judgment obtained against the Cobalt Nipigon Syndicate by default of pleading, must apply to the only Cobalt Nipigon Syndicate in existence in November, 1906, when A. M. Wiley is alleged to have agreed to sell to the "defendant, the Cobalt Nipigon Syndicate, for the consideration of $30,000" the lands mentioned—and that was the syndicate formed by the first agreement of November 24th, of the three persons named—the new syndicate had not been formed with "special members"—these came in in answer to the advertisement published after the sale and after the undertaking. No judgment against that syndicate can bind the "special members"—they are not partners: *McKim* v. *Bixel.*

So long as there are persons for whom the Trusts & Guarantee Co. are trustees, I think, they are entitled to retain these transfers.

It is claimed that the plaintiffs have a vendor's lien. It is not proved as against the Trusts & Guarantee Company or their *cestuis que trustent* that the amount was not paid— but waiving that, when the company accepted the trust, it was represented by the owner of the land that the land had been paid for; it is apparent that the company would not have allowed themselves to be represented in public advertisements as vested with the property if the land had not only not been paid for, but even wholly unpaid for. The representation was made that it should be acted upon, the advertisement represented the land as vested in the company—which, course, implies not subject to a vendor's lien, but paid for; subscriptions were received on this basis by the company from special members who are now *cestuis que trustent* of the company; and I think the vendor is now estopped from setting up that the land is unpaid for—at least, as against the "special members." I think from the evidence of Warren, the position of E. as solicitor for Wiley and the syndicate, and all the circumstances Wiley must have known, and did know, the whole plan. This, however, applies only to the "special members," who are entitled only to 40 per cent. of the proceeds of the lands—the judgment against the syndicate will apparently bind the partners in that syndicate, i.e., those who are entitled to the 60 per cent.