

each of the others 10 per cent, and he to have the right if either of the others should desire to retire to buy him out for \$500.

This, if any, must have been the Cobalt Nipigon Syndicate, which had dealings with Wiley. Then there is a more extensive, "The Cobalt Nipigon Syndicate," provided for by another indenture of the same date, exhibit 5, to be composed of these three and "such other persons as may from time to time be entitled to membership in such syndicate," the number of memberships to be unlimited, the three persons named to be entitled to 60 per cent. of the profits and the "members" to 40 per cent. "Memberships" were advertised for sale in advertisements referred to by Warren (exhibit 3), and some favourable answers received with \$120 enclosed for a "special membership" (see *McKim v. Bixel*).

It was this "syndicate" for which the Trusts & Guarantee Co. were to be trustees—a syndicate composed of three persons, who were partners, and an undetermined number of persons, who were not partners, but rather like shareholders in a company or co-owners, than members of a partnership. See 19 O. L. R., p. 87.

It is plain that the "memberships" so far as appears were brought on the advertisement, which states in so many words, "Title to all mineral lands is, and will, be vested in the Trusts & Guarantee Co., Limited," and "The Syndicate already own over 750 acres of valuable mining lands . . ."

It was clearly the duty of the Trusts & Guarantee Company to have this land vested in them before permitting the advertisement to issue—and having permitted the advertisement to issue before such vesting, the company were clearly right in insisting upon its being done as soon as possible. "Vested" must in this connection mean "effectively and safely vested," and I cannot understand the action of the company in waiving the right—which in their position as trustees may also have been a duty. It is possible that there were considerations which justified them in so doing; but, if so, they do not appear. But we need not consider this matter—the company consent now to be bound by their agreement—this consent and the judgment of the Court based upon it will not prejudice the right of the *cestuis que trustent* or any of them against the trustees for breach of trust, if any damages accrue from such breach of trust, which is not to be anticipated.