

The learned Judge referred to the views expressed by Kelly, J., and Middleton, J., and to secs. 71 (1), 72, and 73 of the Registry Act; and said that the cases referred to by Middleton, J., if any authority for the proposition was needed, established that a purchaser for value without notice, whose conveyance was registered, was not affected by constructive notice of any prior instrument affecting the land, or any interest in the land, unless the instrument was registered, or unless he had actual notice of it or of the existence of the interest.

That a person who has notice of an instrument has notice of its contents is undoubted, but it is constructive notice only.

In the case of a trust of land, the trust—at all events if it is an express trust—must be evidenced by an instrument in writing; and, there being no such instrument registered, it is to be adjudged fraudulent and void against subsequent purchasers and mortgagees for valuable consideration without actual notice.

In this case the purchasers subsequent to the conveyance had actual notice, not of any instrument declaring or evidencing a trust, but only, at the most, that the land was conveyed to the grantee in trust.

Reference to London and Canadian Loan and Agency Co. v. Duggan, [1893] A.C. 506.

All that the purchaser in this case had actual notice of was, that the land was conveyed to the grantee “in trust,” and, but for the provisions of the Registry Act, he would have been affected with notice, but only constructive notice, of fact and instruments, to a knowledge of which he would have been led by an inquiry for the instrument or other circumstances creating the trust; and such notice as that does not now affect the title of a purchaser for value whose conveyance is registered.

After the lapse of so many years since the conveyance by Turner, it should be presumed that the sale by him was properly made, especially as the possession of the land had been consistent with the registered title.

The objection of the purchaser to the title should not prevail.

MACLAREN and FERGUSON, JJ.A., agreed with MEREDITH, C.J.O.

MAGEE, J.A., read a dissenting judgment. He was of opinion that the vendor had not made out a title which should be forced upon the purchaser. It was for the vendor to make more effort to obtain information, or he could apply to quiet his title or have it brought under the Land Titles Act.

*Objection declared invalid (MAGEE, J.A., dissenting).*