

24 hours in each year for the excessive quantity used; and it was immaterial whether that was to be in addition to the \$3 per horse-power or the whole price that was to be paid.

It was conceded by counsel for the appellant company that, if the price to be paid was \$6 or \$9 per horse-power, no question as to its being a penalty arose.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

DECEMBER 19TH, 1919.

*RE McKINLEY AND McCULLOUGH.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title—Conveyance Made in 1888 to Person “in Trust”—Evidence of Nature and Terms of Trust and of Right of Person to Sell, Required by Purchaser—Absence of Actual Notice of Adverse Right—Constructive Notice—Registry Act, secs. 71 (1), 72, 73—Presumption—Lapse of Time—Objection Declared Invalid.

Motion by a vendor of land, under the Vendors and Purchasers Act, for an order declaring whether an objection to the title made by the purchaser was or was not a valid objection.

The motion was referred to the Court by MIDDLETON, J.: see ante 176.

The motion was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

T. A. Gibson, for the vendor.

A. D. McKenzie, for the purchaser.

MEREDITH, C.J.O., in a written judgment, said that the motion was referred to the appellate Court because of the decision of Kelly, J., in *Re Thompson and Beer* (1919), ante 4, and a previous decision of Middleton, J., himself, in an unreported case, the two being in conflict.

The question raised was as to the effect of the fact that in one of the conveyances forming a link in the chain of title, a conveyance, dated the 1st May, 1888, from William Cayley to John Turner, the words “in trust” followed the name and description of the grantee, there being nothing in the conveyance and nothing registered to shew what the trust was, and the vendor being unable to furnish any evidence of what the trust, if any, was.