

On the construction of the contract, parts of his judgment are as follows:—

It was in contemplation of the parties to this business contract that the defendants were to pay an amount proportioned to what they could and did sell; and, since an electrical horse power (or any horse power) cannot be sold, the expression in the early part of clause 2 must receive an interpretation which will give to the words a sensible construction and one in accordance with the object of the contract. "At the rate of one dollar per annum" means at a rate which, if it continued for one year, would be one dollar. For example, if a contract were to pay for any horses over 20 at the rate of \$50 per annum for each, it would not mean that, once more than 20 horses were supplied, they must all be paid for for the full year or the period after their first supply, although they were furnished only for a day or a month. So here, I think, once the electricity is being sold and therefore generated so as to give power at a rate greater than 10,000 horse power, it must be paid for at the rate of \$1 per annum per extra horse power, so long as the electricity continues, but the contract does not mean that the electricity must continue to be paid for, although the current producing that extra horse power rate should cease the next moment.

It is said that, while the amount of electricity used by the defendants is very trifling as compared with what is sold, this may not continue to be the case, and I am, therefore, asked for a declaration as to the true amount upon which the computation is to be based to fix the remuneration. I am of opinion that it is the amount not used by the defendants themselves. . . . It is not the hydraulic power and its equivalent in electricity which forms the basis; it is only so much of that power as produces electricity that can be utilised. . . . It is the vendible output that is charged for. . . .

The action fails—the plaintiff should pay the costs. There will be a declaration as to the meaning of the contract.

RIDDELL, J.

NOVEMBER 2ND, 1909.

WHICHER v. NATIONAL TRUST CO.

Contract—Advertisement—Redemption of Bonds—Specific Performance—Mortgage Trust Deed—Breach of Trust—Trustees Acting "Honestly and Reasonably"—62 Vict. (2) ch. 15, sec. 1 (O.)

The Dominion Copper Co., a mining company operating in British Columbia, on the 1st June, 1905, issued bonds to the face