

it is said, about \$5,100. On the 5th July, 1910, Martin, the assignee of Murdoch Nicholson, gave a quit claim to the company.

Nicholson and his wife refused to give up possession, and an action was brought by the company against them—a receiver was appointed of the property, it is said.

The defendant Murdoch Nicholson claims to be in possession by the leave of his wife, and she claims to be entitled to “an assignment . . . of the mortgage . . . in priority to the rights of the plaintiffs and . . . to be entitled to redeem as against the plaintiffs.”

The facts are as follows: A sale was advertised for the 27th May, 1910. The bids went up to \$6,600, being less than the reserved bid. Mrs. Hose thereupon determined to sell by private sale. Her solicitor in the sale proceedings, Mr. Machin, had in his office his present partner Mr. Ap’John, then not as yet called, but of considerable experience. Mrs. Hose saw each of these, and instructed each to sell for her for any sum in excess of the \$6,600.

Nicholson had some more or less desultory conversations with Machin, looking toward his buying the property. Of course, he recognized that he could not redeem, as he had conveyed his equity of redemption to the assignee.

But during all his negotiations he did not mention the name of the person to whom the conveyance was to be made, although he says that he was in reality acting for his wife. That it was a purchase under power of sale, and not a redemption that was contemplated, is plain—among other things, the amount which Machin required to be paid was much in excess of the amount due under the mortgages.

A little after the abortive sale, Toole, the president of the plaintiff company, became interested in the property. On Thursday, the 2nd June, he went into Machin’s office and asked him if the property were sold, and when he found that it was not sold, he said he would give \$6,700 for it, if the title were good, etc., and it was arranged that Machin should see to that for him. Nicholson had been in Machin’s office that day, but had expressed his want of hope of being able to raise the money to buy the property. Toole asked Machin if Nicholson or his wife would likely buy the property, as, if there was any chance of their being able, he (Toole) did not want to make a bid. He was told by Machin that there was no chance of their buying. Machin left town, but Ap’John, who had a power of attorney from him, remained—on Friday, 3rd June, Ap’John, for Machin, notified