

I am unable to construe the power of sale in the same manner as Mr. Justice Street. He thinks a sale "by" giving 15 days' notice must be taken to mean to sell "after giving" or "first giving," or simply "giving," the required length of notice. He says the giving of the notice was a condition to be performed, in the absence of which no authority to sell arose; that the stipulation did not require a sale by auction, and therefore the bank were entitled under it to sell either by private sale or by public auction. I cannot adopt that view of the power, because it eliminates from the contract the word "by," which we are not at liberty to do. The 15 days' published notice was the means agreed upon for effecting the sale. The notice was published, but it effected nothing. The bonds were still unsold, and it is not pretended that the sale to the respondents was effected by the notice. The notice was of a sale by auction, and I think that is what the contract intended. That is apparent from the power given to the bank to buy in and resell, and I think the bank had no power to sell otherwise than by auction. The sale in question was made by private contract, and I think the bank had no power to do that. But, even if, after the sale by auction in pursuance of the published notice had failed, it could be held that then the bank had power to sell without a further advertisement, I think this sale cannot and ought not to be upheld as a valid sale of these pledged bonds. In Story on Bailments, 9th ed., sec. 310, a work which ever since its first publication in 1839, has been cited in England as an authority, it is said: "The common law of England existing at the time of Glanville seems to have required a judicial process to justify a sale, or at least to destroy the right of redemption. But the law as at present established leaves an election to the pawnee. He may file a bill in equity for foreclosure and sale, or he may proceed ex mero motu, upon giving due notice of his intention to the pledgor. In the latter case, if the sale is bona fide and reasonably made, it will be equally obligatory as in the first case. But a judicial sale is most advisable in cases of pledges of large value, as the Courts watch any other sale with uncommon jealousy and vigilance; and any irregularity may bring its validity in question."

There is very little authority that I have found in the English books as to whether, or when, a sale of a pledge by private contract may be made, but in the United States the