

only conditional element about it was that if a certain other scheme were adopted at it the confirmation of the resolution passed at the previous meeting would become unnecessary.

MORTGAGE—POWER OF SALE—BONA FIDE SALE UNDER POWER BY MORTGAGEE TO HIS SOLICITOR—ACTION TO SET ASIDE SALE UNDER POWER—LACHES.

Nutt v. Easton (1899) 1 Ch. 873, was an action by a mortgagor to set aside a sale made by the mortgagee to her solicitor in assumed exercise of the power of sale in the mortgage. The mortgage was of a reversionary interest, and in April, 1877, the mortgagee being anxious to realize the security, offered it for sale by auction but failed to secure a purchaser. In October, 1887, she instructed her solicitor to find a purchaser, and he reluctantly agreed that if neither he nor his client could find a purchaser before Christmas he would buy. No other purchaser being found, the mortgagee in January, 1888, bona fide sold the property under the power, to the solicitor at more than its actuarial value. The solicitor at once gave notice of the sale to the plaintiff, who was the owner of the equity of redemption, and who obtained professional advice that the sale could be set aside, but, to use the classical language of the report, concluded "to let the matter slide" and to wait the course of events. The reversionary interest fell into possession in April, 1897; the solicitor died in 1895, and the defendants were his executors. In December, 1897, the action was commenced. Cozens-Hardy, J. who tried the action, was of opinion that the plaintiff was not entitled to relief, that the recent authorities established that a mortgagee selling under a power of sale in his mortgage was not in the position of a trustee, and that a sale to his own solicitor if made in good faith and without any intention of dealing unfairly with the mortgagor, even though capable of being impeached by the client, would, nevertheless, be valid, and binding as against the mortgagor. The sale, in his opinion, though possibly voidable at the instance of the mortgagee, was not absolutely void, and could not be impeached by the mortgagor; and on the ground of laches also, he held it impossible for the plaintiff to succeed.