

RECENT DECISIONS.

contains some remarks by Jessel, M. R., on what he calls "a very curious point indeed," viz., as to the time during which a power of sale given by a will will last. The Court of Appeal decided in this case (i) that where trustees under a will profess to sell the land of their testators to a Railway under the provisions of the Imp. Lands Clauses Act, the validity of the sale must be determined without reference to any power of sale, which they may possess under the will of the testator; (ii) that trustees of land for *femes couvertes* who are absolutely entitled for their separate use are not persons competent to contract with a railway company for the sale of the land under Sec. 7 of the said Act (R. S. O. c. 165., s. 13); (iii) that where trustees selling to a railway appoint one of themselves as surveyor to value the land under the Act, the sale will be invalid. The principal judgment is that of Jessel, M. R., who as to (ii) observed, p. 437, after reading the section empowering trustees to sell and convey,—“It is on behalf of a *cestui que trust* under disability—a person who cannot convey—and that is the reason why nobody has dreamt of applying it to a bare trustee for a man. The same thing must apply to a bare trustee for a woman who is entitled for her separate use free from restraint on anticipation, etc.”; while as to (iii) he says that the whole theory of the Act is that an independent person is to be called in.

In discussing the point as to the time during which a power of sale given by a will will last, the M. R. observes, that in order to limit powers of sale, though framed in general terms, so as to bring them within the general rule,—that you cannot have a power of sale to change the nature of the interests limited by the instrument so as to exceed the limit of time prescribed by the rule against remoteness or perpetuity,—the Courts have decided that these powers are limited by the nature of the limitation sustained in the settlement or will, so that when, by reason of the expiration or cesser of the limitations contained in the settlement the absolute interests come

into existence, then the power is considered to be at an end. But he adds, although a general power, exerciseable at any period, of course, would be bad in law, there may be a valid power even where there are nothing but absolute limitations of interests given in the first instance, or in other words, where the power is to take effect on the coming into existence of the absolute limitations, and this though there be a preceding life estate. Thus a limitation to a person for life, and after the death of the tenant for life, upon trust to divide among my twelve children, with power, for the purpose of division, to sell, would not be void, for the trustees are bound to make a division within reasonable time, the power “is limited from the nature of the purposes for which it is to be used.” We may add that the very next case affords an example of an invalid power of sale; (see page 446-47).

WILL.—GIFT TO CLASS.—REMOTENESS.

Of the next case, *Goodier v. Johnson*, p. 441, it is only necessary to say that the Court of Appeal there decided that a gift to all the children of A. and B., and the issue of such as may be dead at the time of distribution, could not—at any rate when the other clauses of the will were considered—be treated as a gift to such of the children as are then living, and the issue of such of them as may be then dead,—but that it was a gift to all the children of A. and B., with a gift over by way of substitution of the shares of such of them as might die before the period of distribution leaving issue. And we may add the case also illustrates the rule that when the gift over of any share is void for remoteness, this does not affect the original gift.

SOLICITOR AND CLIENT.—MORTGAGEE IN POSSESSION.

Cockburn v. Edwards, p. 449, illustrates the care a solicitor must use where he lends money to a client on mortgage, not to draw the mortgage deed in an unusual form without fully explaining it to the client. All the judges of the Court of Appeal deprecate the practice of solicitors lending money to clients.