

for which he gave them a charge on his interest in the business. Kennedy assigned his interest in the charge to one Norton. After this assignment Walker paid Kennedy sums reducing his claim to £1,878, but whether these payments had been made with the concurrence or privity of Norton was not shown. Kennedy subsequently mortgaged his equity of redemption to Windsor. Windsor then sold the interest mortgaged under a power of sale in his mortgage to the plaintiffs, and in the same deed Norton also joined and assigned all his interest, receiving £1,000 of the plaintiffs' purchase money. The plaintiffs claimed to be entitled to the benefit of Norton's charge for £6,000 on the ground that the payments to Kennedy were invalid as against Norton, and as against the plaintiffs as his assignee. There was no express assignment of Norton's mortgage to the plaintiffs. The majority of the Court considered that all that the plaintiffs intended to buy was Windsor's interest free from incumbrance, and that by treating Norton's claim as paid off the plaintiffs got all the benefit thus bargained for, but by permitting them to treat it as a subsisting encumbrance it would enable them to rank in competition with Willoughby and Paulet in respect of the original £6,000 advanced by Kennedy and mortgaged to Norton, which was never intended. Kay, L.J., on the other hand considered that the plaintiffs were entitled to treat Norton's mortgage as a subsisting security, and to any benefit which might be derived therefrom, including the right to dispute the validity of the payments made by Walker to Kennedy after he had mortgaged his interest to Norton.

MORTGAGE—POWER OF SALE—SALE UNDER POWER TO ONE OF SEVERAL MORTGAGORS—REDEMPTION—MORTGAGEE, DUTY OF—TENANTS IN COMMON—FIDUCIARY RELATIONSHIP.

In *Kennedy v. DeTrafford*, (1896) 1 Ch. 762, two points of some importance are discussed. The action was brought by one of two mortgagors (tenants in common) to impeach a sale made to the other of the mortgagors under the power of sale contained in the mortgage. The plaintiff claimed either that the sale was void as a sale under the power, and that the