

THOMAS J. LAWLOR (DEFENDANT).....APPELLANT;

1899

AND

\*Mar. 15.

LEWIS J. DAY (PLAINTIFF), AND  
 OLIVER G. RUTLEDGE AND  
 HATTIE A. RUTLEDGE (DE- } RESPONDENTS.  
 FENDANTS)... ..

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,  
 MANITOBA.

*Mortgage—Sale of mortgaged land for taxes—Purchase by mortgagor—  
 Action to foreclose—Pleading.*

Lands under mortgage were offered for sale by the municipality for arrears of taxes and purchased by the wife of the mortgagor. The tax sale certificate was afterwards assigned to L., who obtained a deed from the municipality. In an action against the mortgagor, his wife and L. for foreclosure the mortgagee alleged that the purchase at the tax sale was in pursuance of a fraudulent scheme by the mortgagors to obtain the land freed from the mortgage, and the trial judge so held in giving judgment for the mortgagee. The Court of Queen's Bench did not pronounce on the question of fraud but affirmed the judgment on other grounds.

*Held*, affirming the decision of the Court Queen's Bench, that L. could not claim to have been a purchaser for value without notice as such defence was not pleaded, and it was not a case in which leave to amend should be granted.

*Held* further, that the facts proved on the trial were sufficient to put L. on inquiry and so amounted to constructive notice.

APPEAL from a judgment of the Court of Queen's Bench, Manitoba (1), affirming the judgment at the trial in favour of the plaintiff.

The facts of the case are sufficiently stated in the above head-note.

\*PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

(1) 12 Man. L. R. 290 sub nom. *Day v. Rutledge*.

1899

LAWLOR

DAY.

*Ewart Q.C.* for the appellant argued that it was not necessary to plead purchase for value without notice, and that it could not have been pleaded considering the manner in which the statement of claim was framed. He cited *Keate v. Phillips* (1), on the question of estoppel.

*S. H. Blake Q.C.* and *Smythe Q.C.* for the respondents, were not called upon.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (Oral).—This appeal fails on the grounds relied on by the Judges in the Court of Queen's Bench. I cannot hold that Lawlor was a purchaser for value without notice; first because that defence was not pleaded, and it is not a case in which, even with the large powers given us by the statute, we should grant leave to amend; secondly, the facts found amounted to constructive notice, in other words they were sufficient to put the appellant on inquiry.

The appeal must be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant: *Ewart, Fisher & Wilson.*

Solicitors for the respondent Day: *Mulock & Robarts.*