

Province of Manitoba.

QUEEN'S BENCH.

Full Court.]

DAY v. RUTLEDGE.

[June 27.

Tax sale—Mortgagor and mortgagee—Purchase at tax sale by wife of mortgagor—Assignment of tax sale certificate—Purchaser for value without notice—Pleading—Joinder of causes of action—Onus probandi—Assessment Act, s. 186.

Appeal by plaintiff against the lien for taxes paid given to the defendant Lawlor by the judgment ordered to be entered at the trial before Dubuc, J., noted ante. p. 279, and appeal by the defendant Lawlor who claimed that the action should be dismissed as against him with costs. In allowing the plaintiff's appeal and dismissing Lawlor's appeal with costs, the following points were decided :

1. An objection by Lawlor to the statement of claim for multifariousness on the ground that a separate action should be brought to set aside the tax deed to him, could not succeed : *Cox v. Barker*, 3 Ch. D. 359; *Child v. Stenning*, 5 Ch. D. 695. The objection should have been to the joinder of other causes of action to an action for possession of land without leave as required by Rule 251 of the Queen's Bench Act, 1895, if in fact no such leave had been given.

2. The plaintiff was entitled to meet the defendant Lawlor's allegation of a title paramount under the tax deed and its statutory effect as evidence by showing omissions and informalities which invalidate the proceedings and to have an adjudication upon the question of title without any specific prayer for relief against the deed.

3. When the tax sale took place, the wife of the mortgagor was as free as any stranger to acquire for her own benefit any title to or interest in the land paramount to that of the mortgagee, either by using money of her own, if she had any, or by inducing a third party to advance it on her separate account, provided the transaction was not merely colorable and really carried out on behalf of the mortgagor.

4. There was not sufficient evidence of any trust as between the defendant Lawlor and the Rutledges, and for all that appears in the evidence there was an actual sale of the tax certificate and the rights conferred by it by the first assignee to Lawlor for valuable consideration, and the onus was not thrown upon him to prove that Mrs. Rutledge acted on her own account and not as agent for her husband in making the tax purchase.

5. Mrs. Rutledge's conduct after she had purchased, in concealing the fact from the mortgagee, in endeavouring to obtain an extension of time, in executing a new mortgage and in other ways, would have disentitled her to proceed with her purchase and she could not have acquired a valid title as against the mortgagee ; but it does not follow that a person purchasing her apparent rights