

*Held*, affirming the judgment of the Supreme Court of the North-West Territories, that the tenancy after the eleven months expired was only from month to month and the action was properly dismissed by the Court below. Appeal dismissed with costs.

*Latchford* for appellant. *Lougheed*, Q.C., for respondent.

Manitoba.]

LAWLOR *v.* DAY.

[March 15.]

*Mortgagor and mortgagee—Foreclosure—Tax sale—Purchase for value—Notice—Pleading.*

In 1888 R. gave a mortgage on his land to D., his wife joining to bar her dower. In May, 1893, the mortgaged lands were sold for municipal taxes and purchased by Mrs. R. who received the tax sale certificate. Later in 1893 a new mortgage on the lands was executed by R. and his wife in substitution of the former, the fact of the sale for taxes not being disclosed to the mortgagee. Subsequently the tax sale certificate was assigned to L. who, in 1895, received a tax sale deed of the land. An action to foreclose the mortgage was brought against R., his wife and L., the mortgagee alleging that the purchase at the tax sale was in pursuance of a scheme by defendants to cut out the mortgage, and plaintiff in his action asked for a declaration that L. held the land in trust for the other defendants. The Court of Queen's Bench exonerated L. from the charge of fraud but held that he should have pleaded purchase for value without notice.

*Held*, affirming such judgment, that L. should have pleaded such defence; that there were circumstances amounting to constructive notice that should have put him on inquiry; and that the purchase at the tax sale was really for the benefit of the mortgagor.

*Held* per GWYNNE, J., concurring in the opinion of DUBUC, J., at the trial that the whole scheme was a contrivance to commit a fraud on the mortgagee.

*Ewart*, Q.C., for appellant. *S. H. Blake*, Q.C., and *Smythe*, Q.C., for respondent.

Ont.]

FARQUHARSON *v.* IMPERIAL OIL CO.

[March 17.]

*Appeal—Leave to appeal per saltem—Appeal from order in chambers—Highest court of final resort—Judgment of Divisional Court—Appeal direct from.*

There is no appeal to the court from an order of a judge in chambers granting leave to appeal. *Ex parte Stephenson* (1892) 1 Q.B. 394, followed.

Per GWYNNE, J., in chambers. In cases in which the Ontario Legislature has enacted that a litigant who takes his case to a Divisional Court for review of the judgment at the trial, he has no further appeal to the Court of Appeal, the judgment of the Divisional Court is the judgment of