

ledge to make the purchase. This person in May, 1895, assigned the certificate to the defendant Lawlor for \$75, and a few days afterwards a tax sale deed of the land was issued by the municipality to Lawlor. The Rutledges continued to live on the property up to the time of the action. It was shown that Rutledge was present when the negotiations for the sale of the certificate to Lawlor took place, and Lawlor leased the property to a cousin of O. G. Rutledge, an unmarried young man, who lived with him.

This action was brought for the foreclosure of the mortgage and to have it declared that Lawlor holds the land in trust for the mortgagor. The mortgage contained the usual covenants by the mortgagor for payment of the mortgage money and taxes and performance of statute labor.

Held, following numerous decisions in the courts of the United States, that the mortgagor, who has a duty to pay taxes, cannot, after neglecting such duty, purchase at a tax sale and acquire a valid title which would defeat the claim of the mortgagee.

Held, also, following *Blackwell on Tax Title*, 572, and *Warner v. Broquet*, 39 Pac. R. 922, that a wife cannot obtain a valid tax title to her husband's real estate by the purchase thereof at a tax sale, if she is under any obligation, legal or moral, to pay the taxes, and that in the circumstances appearing in the case Mrs. Rutledge was under at least a moral obligation to pay the taxes, and had been guilty of fraudulent concealment of the fact of her purchase when the plaintiff's brother was at her house; and that the facts showed that she had taken part in a fraudulent scheme to defeat and cut out the plaintiff's mortgage.

Held, also, that, although there was no evidence to show that he had purchased the certificate to assist the Rutledges in defeating the plaintiff's mortgage, the assignee Lawlor could claim no better or higher rights under the tax sale than the original purchaser had acquired. *Blackwell on Tax Title*, 633, and *Manning v. Bonnard*, 34 N.W.R. 439, followed. Lawlor knew that there was a mortgage on the land when it had been purchased at the tax sale by the wife of the mortgagor, and he must have known from the presence of Rutledge when he made his bargain for the certificate that Rutledge, or his wife, or both, were still interested in the land.

Declaration that Lawlor holds the land in trust for Rutledge and his wife and the usual foreclosure decree made with costs. Lawlor to have a lien for the full amount of the tax sale purchase money and any sums subsequently paid by him for taxes with interest.

Culver, Q.C., and *Mulock*, Q.C., for plaintiff. *Ewart*, Q.C., and *Wilson* for defendants.

Taylor, C.J.]

PHILLIPS v. PROUL.

[March 11.

Mortgagor and mortgagee—Accounts in the Master's office—Subsequent incumbrancer—Bonus or special commission on mortgage loan, when allowed.

This was an appeal by a subsequent incumbrancer from the report of the Master on taking of the account of the plaintiff's claim under a mortgage given by the defendant.