

province and did not return until the following August. The mortgage money being unpaid, the mortgagee took proceedings under the power of sale in the mortgage, served the required notice by posting it up on the house on the land, and advertised a sale by auction for April 9, 1901. Before the sale McK. arranged with one D. to bid at the sale for the land in the name of D. but in reality for McK. himself. This arrangement was carried out, and the land was knocked down to D. for \$195, although it was worth, as the judge found, at least \$800. McK. then executed a deed of the land to D. purporting to be made in pursuance of the power of sale and on the same day D. executed a quit claim deed to McK.'s wife. These deeds were prepared by McK.'s solicitor on his instructions, and no money passed either from or to D. except that he was paid \$5. The deeds were both registered on 11th April. On or before that day an agreement was made between McK. and the defendant B., through her husband acting as her agent, for the exchange of the land in question for a piece of property in the village of Dauphin. This exchange was carried out on April 11, by the execution and delivery of quit claim deeds prepared by the same solicitor. No inquiries were made as to the title or the sale proceedings by B. or her husband. The plaintiff's claim in this action was for a declaration that the alleged mortgage sale was void and that the three deeds of his land should be set aside and for an order requiring the defendant B. to reconvey to him or to execute a discharge of the mortgage on payment of the amount due thereon, or, in the alternative for damages against McK.

The trial judge found as a fact that the alleged mortgage sale to D. and the deed to McK.'s wife were made in pursuance of a fraudulent scheme by McK. to acquire the absolute ownership of the land for much less than it was worth, but the defendant B. claimed that he was entitled to rely on the defence of being an innocent purchaser for value without notice.

Four grounds against this were urged as follows: (a) That the service of the notice of sale, not having been personal, was not valid, as the house was not the place where plaintiff was living at the time. (b) That the solicitor who acted for B. in the exchange of lands was the same solicitor who acted for McK. in carrying out the fraudulent scheme, and, therefore, that she was affected with notice of whatever he knew. (c) That B. only got a quit claim deed of the property, and could only take what interest the wife of McK. had in the land, and therefore stood in no better position than D. or McK.'s wife neither of whom could, as against the plaintiff, claim to be an innocent purchaser for value without notice. (d) That the fact that B. was offered title through the wife of the mortgagee so soon after the mortgage sale was in itself notice of fraud, or at any rate should have put her on inquiry.

Held, 1. The first ground was untenable because, although the plaintiff had left the house, it was his usual place of abode within the meaning of the Act.