

MIDDLETON, J.

MARCH 24TH, 1917.

## \*MARTIN v. EVANS.

*Mortgage—Foreclosure—Final Order—Motion to Open up—Reversionary Interest in Land—Limitations Act, R.S.O. 1914 ch. 75, sec. 20—“Possession”—Effect of, notwithstanding Irregularity in Judgment—“Land”—Sec. 2(c)—Effect of Laches for Statutory Period if Statute not Applicable—Equity Following the Law.*

Motion by James Evans and William Evans the younger for an order setting aside a final order of foreclosure dated the 18th June, 1897, or suspending the operation thereof, or directing that the judgment for foreclosure be amended by declaring that William Evans the elder was, at the time the judgment was signed, under no liability under the mortgage proceeded upon in the action.

The mortgage was made on the 7th June, 1893, by William Evans the younger and William Evans the elder to Edward Martin. The property mortgaged by William the elder was his reversionary interest in land after the termination of a life estate. This interest was mortgaged as additional security for an advance made by Martin to William the younger upon a mill property included in the mortgage.

Martin, the original plaintiff, died in February, 1904. William Evans the elder died on the 3rd September, 1907, intestate. The applicants were his heirs; no letters of administration of his estate had been issued. The life-tenant died on the 10th August, 1916.

The motion was heard in the Weekly Court at Toronto.

W. S. MacBrayne, for the applicants.

E. D. Armour, K.C., for the executors of the deceased plaintiff.

MIDDLETON, J., in a written judgment, after setting out the facts and the grounds of attack, said that Mr. Armour's contention that, the Limitations Act having run in favour of the mortgagee, the Court should not interfere, even if the judgment were irregular, was entitled to prevail: R.S.O. 1914 ch. 75, sec. 20.

The "land" in question was a reversionary interest in the three parcels, owned by William the elder. The life-tenant was, until her death in August, 1916, in occupation of the land; and, for this reason, it was said, this section did not aid the mortgagee. But by the interpretation section (2(c)), "land" includes estates