

TEETZEL, J.

JULY 21ST, 1910.

HAZEL v. WILKES.

Judgment—Foreclosure—Action to Set aside — Irregularities — Waiver by Delay—Purchaser—Trustee under Marriage Settlement—Redemption — Improvement in Value of Property — Lapse of Time—Equitable Discretion of Court.

Action to set aside a judgment of foreclosure, and for redemption.

The action in which the judgment of foreclosure was obtained was in respect of two mortgages dated respectively the 13th September and 31st December, 1888, securing in all about \$1,000. The writ of summons in that action was specially indorsed in accordance with the Rules then in force, and was served upon the defendant in that action (the plaintiff in this) on the 16th October, 1889. Wilkes, one of the defendants in this action, was plaintiff in that action. The judgment was entered on the 7th January, 1890, the defendant not appearing, and a final order of foreclosure was made on the 26th March, 1891.

The plaintiff alleged that the judgment and final order of foreclosure were irregularly obtained.

W. S. Brewster, K.C., for the plaintiff.

E. Sweet and H. S. Hewitt, for the defendants.

TEETZEL, J.:—At the trial all the proceedings in the mortgage action were put in, and the plaintiff's counsel pointed out a number of alleged irregularities therein which he urged were sufficient to justify setting aside both the judgment and the final order of foreclosure.

Without deciding whether, upon a motion promptly made in the mortgage action, the proceedings would have been set aside or amended on the ground of irregularity, I do not think that, after the lapse of twenty years since the judgment was signed, such a motion should be allowed, even against the defendant Wilkes.

Nor is it necessary to decide whether, since the Judicature Act, the proceeding should not be by motion in the mortgage action, instead of by an independent action.

Under Con. Rule 311, an application to set aside process or proceedings for irregularity must be made within a reasonable time. The plaintiff has not objected within a reasonable time, and I think he must be treated as having waived the irregularities.