

acquiesced in the proceedings upon which such judgment was based, and had, by delaying her present motion from the time of service of the impeached notice (September, 1904), until April, 1906, been guilty of such laches that she is debarred from relief.

If the impeached proceedings were mere irregularities, there may be evidence of waiver sufficient to cure them. But it is said that no delay and no acquiescence suffice to cure a nullity: *Hoffman v. Crerar*, 18 P. R. 473; *Appleby v. Turner*, 19 P. R. 145, 175. That the service on Mrs. French and the judgment founded upon it were nullities cannot, I think, be controverted. Of such there can be no waiver. Unless, as suggested in *Hewitson v. Fabre*, the conduct of defendant has been such as raises an estoppel against her, which requires the Court to refuse to hear her when alleging the nullity of the proceedings had against her, I know of no ground upon which her present application can be refused.

It does not appear when this defendant became aware that no concurrent writ for service out of the jurisdiction had been issued. That she took any step whatever after becoming aware of the fact that no concurrent writ for service abroad had been issued, is certainly not proven. Nor is it shewn that any step taken by her induced other parties to this litigation to alter their positions to their prejudice. The necessary basis for an estoppel against her, therefore, appears to be lacking.

I do not think I can give effect to Mr. Hodgins's statement that this application is not made on behalf of Mrs. French or by her instructions, based upon the fact of a transfer of her interest to one Hudson. Neither should I dismiss this motion and appeal because the order for judgment of the local Judge, or his order allowing service on defendant, has not been formally set aside. To do so would merely invite an application to set aside those orders, to be followed by a new motion for the relief now asked. If she be entitled to the latter relief, the orders must fall, as of course, on the application of defendants; and, to avoid circuitry and waste of money and energy, they should, if necessary, be now set aside.

But the long delay and the course taken by defendant, coupled with an apparent entire lack of merit in her application, require that while allowing her appeal, I should