

the land purchased from Davis. The plaintiff joined in the mortgage, and, with the defendant, covenanted to pay; but, as a matter of fact, did not pay any money. One solicitor acted in procuring the money upon mortgage and in taking the conveyance from Davis. That solicitor was not called, and it does not appear that the plaintiff took any part with Davis in negotiating for the purchase. He did, as I have stated, have the conversations with his wife. The defendant denies that the plaintiff did contribute, as he promised to do, to the payment of the mortgage, and she denies that the plaintiff furnished or contributed any substantial amount to the maintenance of the family on the farm. It was contended that the plaintiff furnished or paid any money specifically for payment of the mortgage, or that he paid any money to the mortgagees.

The defendant and two sons of the plaintiff and defendant worked, and, by their labour, and mainly from milk produced by an increasing number of cows, paid off the mortgage.

The agreement set up by the plaintiff was not proved. The onus was upon the plaintiff. The defendant denies that there was such an agreement, so it cannot be considered as established. Even if such an oral agreement had been clearly proved, the Statute of Frauds would completely bar the plaintiff's recovery upon it, upon the facts and circumstances in evidence here.

The plaintiff did not strongly contend that there could be any recovery as to the 5 acres and 12 poles; but he strenuously argued that there was a resulting trust in his favour to the extent of an undivided half interest in the land purchased from Davis. I am of opinion that there is no resulting trust here. The plaintiff did not advance the purchase-money either himself or jointly with his wife. There was no arrangement by which the wife's labour or that of the sons should be considered as the plaintiff's or as payment by the plaintiff. The milk money was the principal source from which the money came. Some came in cash, earned elsewhere than upon the premises, by the younger son.

The defendant is not obliged to depend upon the equitable presumption of advancement to resist the plaintiff's claim; but, if she did, the presumption has not been rebutted. The recent case of Commissioner of Stamp Duties v. Byrnes, [1911] A.C. 386, is of interest in deciding what is necessary to rebut a presumption and establish a trust. See Snell's Principles of Equity, 15th ed., pp. 86, 87.

As to the claim for work and labour, particulars of which were furnished by the plaintiff, he is not entitled to recover. The relation of debtor and creditor did not exist.