

after date. The third note produced is dated the 28th October, 1902, payable 3 months after date, for \$755.49, thus maturing on the 31st January, 1903. The fourth note bears date the 7th January, 1903, for \$400, payable 3 months after date, due on the 10th April, 1903. On this note are endorsed credit memoranda, dated the 25th January, 1904, \$29.31, and the 17th February, 1904, \$30.44; being a balance of a payment of \$54.26 which ought to have been credited at an earlier date.

A statement signed by Girardot, dated the 21st January, 1902—evidently a clerical error for 1903—is produced. This certifies that the first Curry mortgage was given as security upon the renewal of three notes: one, \$873.30, evidently the predecessor of the second note; one, \$1,095, evidently the predecessor of the first note; . . . This memorandum further states that the second mortgage was given when a further advance of \$400 was made—this being represented by the fourth note.

The existence of this debt appears to be clear—the only question being whether it is statute-barred. The action was begun on the 16th February, 1914, so that ten years elapsed after the maturity of all the notes save the second. The question as to this is, whether the obligation can be based upon covenant.

The mortgage is made in the statutory form, and contains the usual covenant; and I think that the obligation to pay this note has become a specialty debt by reason of this covenant. It is said that the mortgage contains an acceleration clause. This is true; but I cannot give to it any application which would make this note due at an earlier date. There will, therefore, be judgment against Girardot for the amount due upon this note, with interest.

Turning then to Girardot's counterclaim, I do not think that an agreement such as that set out has been satisfactorily made out. Possibly there was some more or less vague discussion and understanding by which Curry was to aid Girardot, but I do not think that there was any obligation upon him to pay off the prior mortgages, nor that he became in any sense Girardot's agent for the disposition of the property. There can be now no redemption, as the properties are in the hands of third parties; and, apart from any difficulty in the defendant's way by reason of the Statute of Frauds, the Statute of Limitations affords a complete answer to any claim based upon breach of agreement.

Owing to the fact that the plaintiffs claim more than they are entitled to, I think that the judgment for the plaintiffs should not carry costs, but that the counterclaim should be dismissed with costs.