

he mortgaged to Beatty, in August, 1891. That mortgage was to be paid in June, 1894, and in the case of an ordinary mortgage under seal the Statute of Limitations would bar at the end of 20 years—the mortgage being made before the 1st July, 1894 (R.S.O. 1897 ch. 72, sec. 1, sub-sec. (h)). In the form given by the Land Titles Act and in the instrument which was registered in this case, there is nothing as to a covenant to pay; that term is supplied by the statute in sec. 34 . . . i.e., such a covenant shall be implied as against the owner of the land who creates the charge which is completed by the fact of registration. So that the obligation to pay as by and under a covenant to pay is to be regarded as a statutory obligation placed upon the owner for the benefit of the lender or chargee.

The additions to sec. 107 made by the amendment now appearing in 1 Geo. V. ch. 28, sec. 102, may prove useful in litigation arising upon the instrument in other jurisdictions, but do not seem to be needed in the present case.

The registered charge which is created *uno flatu* with the covenant to pay included or implied by virtue of the statute, is to be regarded as the effective and completed instrument, binding both land and person so far as security for the money advanced is concerned; and, though the land may be discharged by an act of grace on the part of the chargee, that does not *per se* relieve the covenantor from the payment of the debt till after 20 years have elapsed without action to recover the claim.

The release given by Beatty was limited to the land in question, and he expressly reserves his rights in respect of the moneys secured and to be paid. The effect is to free the land for the benefit of the first chargee and so enable him to realise more speedily by sale of the estate, which was not worth what was due on the first charge. The effect of the registration of this cessation was, upon sale, to give the purchaser an absolute ownership as to the land, but to leave unimpaired the right of the plaintiff to proceed for the recovery of the amount due by the mortgagor, Bailey: *In re Richardson*, L.R. 12 Eq. 398; *Bell v. Ross*, 26 Vict. L.R. 512, per Madden, C.J.

The obligation to pay rests upon the covenant or contract imposed by statute; and the action is, therefore, an action founded upon a specialty, within the meaning of the Statute of Limitations, and is not barred by lapse of time less than 20 years from the date of default (which at the earliest was in this case 1894): *Cork and Bandon R.W. Co. v. Goode*, 13 C.B. 826; *Essery v. Grand Trunk R.W. Co.*, 21 O.R. 224, following *Ross v. Grand Trunk R.W. Co.*, 10 O.R. 447.