The original note for $1,000 mentioned in the receipt was taken up by the defendant by a part payment in cash and by a renewal note for $975. The defendant contends that by this means the original note was paid, and that the plaintiff has now no right to hold the securities for the renewal note. It is true the original paper with the promise to pay the $1,000 thereon is not in the plaintiff's possession, but *the debt*, or the unpaid portion of it, represented by the renewal note of $975, and for the repayment of which debt the securities were given, has not been paid. Had the present contention of the defendant been the actual agreement between the parties he should have demanded a re-assignment of the securities at the time of the part payment and renewal on the 6th October, 1875; but he made no such demand, and has allowed them to be held up to this time, which circumstances may reasonably be assumed to negative his present contention. Besides the case of *Brownlee v. Cunningham*, 13 Gr. 586, is decisive on this point. In dealing with a similar contention, Mowat, V.C., said: "I am satisfied if I were so to hold I would be defeating instead of giving effect to the original intention of the parties; and that I shall be carrying out the intention of the original transaction and correctly construing the whole evidence by holding that the mortgage was given to secure the indemnification of the mortgagees, and each of them, in respect, not merely of the first note, but also of any subsequent transaction with the mortgagor growing out of it, whether in the shape of renewals, new notes, or otherwise. The parties have acted throughout as if this was the transaction, and I see no reason why I should not give that effect to the mortgage."

Another claim made by the plaintiff is for a cheque drawn by the defendant on the Canadian Bank of Commerce for $283.85 dated the 10th November, 1875, and still unpaid. This is by an agreement which I hold to be binding on the defendant, also covered by the securities held by the plaintiff. The defendant contends that as the remedy for this debt is barred by the Statute of Limitations, the collaterals cannot be held for it. I find the law to be thus stated in Banning on Limitations, p. 16: "The fact that a creditor has collateral security for a simple contract debt will not prevent the debt from becoming barred (as respects other remedies), though he will, of course, retain his lien upon the security." *Higgins* v. *Scott*, 2 B. & Ad. 413, is referred to as the authority for this—where it was held that though the remedy of an attorney on his bill of costs was barred, he had a lien on the fund recovered by the judgment, though such fund was recovered more than six years from the entry of the judgment.

The plaintiff claims to be entitled to interest at two per cent. per month on each of these sums. As to the first mentioned sum the receipt which I have quoted shews that the debt is to bear such interest until paid. As to the second sum the evidence as to the agreement to pay two per cent. a month is not satisfactory; the defendant swears that there was no agreement for subsequent interest beyond that stated in the receipt of 29th January, 1875, and letter of 6th Oct., 1875. I have come to the conclusion on the whole evidence that there was no agreement such as the plaintiff contends for, and as the parties did not embody their agreement as to interest in writing, I must hold that as to this debt the plaintiff is only entitled to interest at the rate of six per cent.

The plaintiff claims interest from the date of the respective loans, 6th October, 1875, and 10th November, 1875, up to the time for redemption. No claim for arrears of interest is specially made by the pleadings; and in order to obtain more than six years arrears the question must be raised on the pleadings: *Sinclair* v. *Jackson*, 17 Beav. 405.

But a more formidable difficulty meets the plaintiff's claim for such arrears. There is no covenant by the defendant to pay interest, and which covenant, when secured by deed, would have made the plaintiff a specialty creditor of the defendant in respect of such interest. A mortgagee under an ordinary mortgage is in the position of a secured creditor for six years, and of an unsecured creditor for the remainder of the ten years: that is he would have two rights of action—an action of foreclosure, and an action on the covenant for arrears of interest.

In the case of *Hodges* v. *Croydon Canal Company*, 15 Beav. 86, the defendants conveyed their works to a mortgagee to hold until repayment of certain moneys borrowed, and interest; but there was no covenant in the mortgage to repay either principal or interest. The Master of the Rolls held, that although the mortgagee could sue for the principal within twenty years, yet his remedy for arrears of