four notes, of ten thousand dollars each, due two, three, four, and five years from date, respectively."

The bill and answer show that Martha E. Worthy, at whose request this suit is brought, holds and owns all the notes but that of $6,340.14, which is held and owned by Samuel A. Tolman. The interest has been paid as it fell due. The answer sets up an agreement with the attorney of Mrs. Worthy and with Mr. Tolman to extend the time of the two first notes one year, which, with authority to make it, as to the one held by Mrs. Worthy, is denied by her. A motion for a receiver has now been heard on bill, answer, and affidavits.

The alleged agreement to extend time is relied upon to defeat the motion for a receiver. If there was such valid agreement, before condition broken, to extend the time beyond when the bill was brought, it might save the breach upon which the bill is founded. But no agreement to extend any definite time appears, or is claimed to have been made, before the first two notes fell due. There was talk about it before, and correspondence after, which, however, appear to have never amounted to more than a loose understanding that payment might then be deferred, but not for any definite time. This would not devest the right of entry accrued by the breach of condition, nor bar proceedings of foreclosure. Authority to make such an agreement would need to be shown, beyond the relation of attorney and client, which is not only not shown, but the want of it is made to appear.

The option to have the whole debt become due on default of part was attempted to be exercised after the next installment of interest was paid, and after this suit was begun. Question has been made in argument whether the attempt was seasonable. That question is not material, however, on this motion; for the orator had the right to enter upon the mortgaged premises and property, and take the rents and profits to apply on the debt, and to have a receiver appointed for that purpose, upon any breach of condition, according to the terms of the mortgage. That question may properly arise when payment of that part of the debt is reached in the course of the proceedings.

By the terms of the mortgage, the mortgagor had the right to the possession and control of the property, and "to quarry and sell marble therefrom, and carry on the business," in the ordinary way, so long as the conditions of the mortgage should be performed. Question is also made whether the mortgage covers marble quarried by the mortgagor in possession. The words, "all and singular the real and personal property of the said Florentine Marble Company, in the state of Vermont, which it now owns, or which it may hereafter own, in connection with the operation of its business," would seem broad enough to cover this marble, if operative upon it. The other property could be mortgaged, mostly or wholly, as real estate could. V. S. § 2269. This would be personal property, but a mortgage of it as if real estate would seem to be valid against the mortgagor; and, with possession, against all. Section 2252. The temporary receiver appointed on consent is understood to be now in

possession of the property, with the rest, which would perhaps be sufficient. This possession should be continued, but without prejudice to the rights of the defendant in any proceeding concerning it that may be advised.

The answer sets up the want of Mrs. Worthy as a party as an objection to the bill; but as the plaintiff is the mortgagee, and by the terms of the mortgage authorized on application of any holder of any of the notes to take possession, and to file a bill in his own name, this objection does not now seem to be in any wise well founded. Temporary receiver continued till further order.

LYNCH v. WRIGHT.

(Circuit Court, S. D. New York. June 10, 1899.)

1. DAMAGES—BREACH OF CONTRACT TO CONVEY REALTY—LOSS OF RESALE.
   On the breach of a contract for the sale of real estate, special damages resulting to the purchaser from the failure to make a resale are only recoverable where the contract for resale was brought to the knowledge of the defendant, and by reason of such knowledge he impliedly undertook, in case of his failure, to make conveyance to pay such special damages by way of indemnity.
2. SPECIFIC PERFORMANCE—CONTRACT TO SELL REAL ESTATE—RENTS AND PROFITS—INTEREST.
   On a decree for the specific performance of a contract to convey real estate at suit of the purchaser, he may elect to pay interest on the purchase money since the time the conveyance should have been made, and take the rents and profits received by the defendant, or to allow the defendant to retain such rents and profits, in which case he will be exempted from payment of interest.
3. SAME—DAMAGES FOR DETERIORATION OF PROPERTY.
   Where residence property has been allowed by the defendant to remain unoccupied during the pendency of a suit by a purchaser to enforce a specific performance of a contract for its sale, in consequence of which it deteriorates in condition, the complainant is entitled on a decree in his favor to an allowance for such deterioration.

This was a suit in equity for the specific performance of a contract to convey real estate and to recover damages for its breach.

Abram Kling, for complainant.
Olcott & Olcott and Geo. N. Messiter, for defendant.

TOWNSEND, District Judge. This case was argued at final hearing upon the following stipulation:

"That a decree directing specific performance, as prayed in the complaint, be entered herein, and that if, in the opinion of the court, after the examination of the record herein, the complainant shall be entitled to any costs, damages, or compensation herein, by reason of any acts of defendant, such costs, damages, or compensation may be assessed by the court upon the testimony, properly admissible, now before the court, without prejudice to the right of either party to appeal."

The sole question, then, is as to the amount of damages, if any, to which the complainant is entitled. On April 27, 1896, the defendant agreed to sell his house to complainant for $11,000,—$200 cash on execution of contract, and $10,800 on delivery of deed