vestment of money; but that it was not a charge for any specific sum, as none was mentioned in it, and it must therefore be taken to be a security for any damages the plaintiff might sustain from the failure of the defendant to perform his engagements, to an extent not greater than $10,000. For it could not have been the intention of the parties that upon failure, in some slight particular, to comply with the terms of the agreement running over a period of 20 years, the plaintiffs, (the mortgagees), would be entitled to foreclose, without an opportunity for the defendant to redeem; and though, as the mortgage was framed, it would appear to provide for a forfeiture of the estate on non-fulfilment of the agreement, this was a forfeiture which the Court would not enforce, but would relieve against, in accordance with the rule laid down by Lord Thurlow, in *Sloman* v. *Walter*, 1 Bro. C. C. 418.

Held also, R.S.O., c. 174, sect. 454, sub-s. 5 (b), authorises taking a mortgage in hand; the Act empowers the municipality to take security, and the word is wide enough to embrace a real security, and the legislature must therefore have intended to remove any incapacity in the plaintiffs to take or hold it.

J. A. McDougall, (with him *Shepley*), for the plaintiff.

Bruce, for the defendant.

Proudfoot, J.] [May 18.

GAIRDNER v. GAIRDNER.

Will—Vesting—Gift over—Contingency.

A testator, by his will, gave his homestead and certain personalty to his wife, while unmarried, for the maintenance and support of the family surviving him, until he or they should attain twenty-one, and afterwards for the maintenance of the wife for life. He then proceeded as follows:—"I further give and bequeath all my other personal and real estate, not hereinbefore mentioned, unto my executors in trust to dispose of and invest," and "upon my son Thomas attaining the age of 21 years, should he be my only child in trust, to pay to him and put him in possession of the said residue,"—but if there were more children, he directed that it should be divided amongst all, in the proportion of one part to a daughter and two parts to a son—"to be paid to him, her or them, by my executors, when they shall respectively attain 21." He then proceeded as follows:—"I further give and devise to my son Thomas, the homestead and farm aforesaid together with the household goods, etc., on the decease of my said wife, or at the time of her second marriage, should he have attained his twenty-first year. But should my said son be still in his minority, to be taken possession of by my executors, as aforesaid, till he attains his majority. And in case my son Thomas should not survive me or attain the age of 21 years, and in case I should have no other surviving child who shall attain the age of 21 years, or in case I should have no grandchild, then, and in that case," his real and personal estate was to be divided in certain proportions among the testator's brothers and sisters.

Held, Thomas took a vested estate, for that it did not appear that the testator intended it to be contingent either on his attaining 21 or surviving his wife.

Held also, the testator's intention was that the gift over should not take effect unless Thomas died under 21, without leaving a child. For as to the residue it was clear that, on attaining 21, Thomas was to have full possession and absolute control over it; and if there had been more children it was to be divided amongst all, and paid to them on their attaining 21, and language of that kind has always been construed as giving an absolute interest; and when a legatee, and the same rule must apply to a devisee, is to have the absolute control at a specified time, a subsequent gift over will be limited to take effect before the time; and that being the true construction as to the residue, the language must receive the same meaning as applied to the homestead.

Blake, Q.C., for the plaintiff.

Maclennan, Q.C., (with him *Loscombe*), for the defendant.

Proudfoot, J., Mr. Thom.] [May 22.

TORRANCE V. TORRANCE.

Taxation—Rule 442.

On the taxation of the plaintiff's costs the taxing officer disallowed the following items:—

1.—A charge of $2.00 for procuring a certain deed for use at the trial which the defendant's solicitor refused to admit. It was shewn that it