Held, affirming the decree of Blake, V. C., that the restriction upon alienation was valid; and that there was a charge created upon the land for the benefit of the widow; that the mortgage was a breach of the condition annexed to the devise, not to sell or transfer without consent, upon which the heirs at law were entitled to enter.

Blake, Q. C., and *Bethune*, Q. C., for appellant.
O'Leary, for respondent.

Ch'y.] [March 2.

KILBOURN v. ARNOLD.

Foreclosure—Fiduciary relation between mortgagor and mortgagee—Evidence.

In a foreclosure suit the defendant set up, that the plaintiff, a solicitor, had been employed by him to procure a loan of $1,400, to pay off a mortgage, on which there was due some $2,000, and that the plaintiff had taken advantage of this to purchase the mortgage at that price.

It appeared that the plaintiff had been applied to by the defendant to procure a small loan, but had been unable to do so; and that he had also acted for B., the mortgagee, in trying to sell the mortgage to a Loaning Company, but had failed, sometime after which he bought the mortgage himself for $1,625.

Held, reversing the judgment of the Court below upon the evidence that there was no confidential or fiduciary relationship established between the parties, and that the defendant should pay the whole amount of the mortgage or, in default, foreclosure.

C. Robinson, Q. C., for appellant.
Bethune, Q. C., and *McIntyre*, for respondent.

Ch'y.] [March 2.

MCGRADY v. COLLINS.

Title by possession—Evidence.

The plaintiff relied on acts of ownership by another and himself successively, but not in privity with each other, which consisted in driving cattle across a small piece of ground and across a stream, in order to sustain a bill to restrain the cutting of ice upon a portion of the stream.

Held, affirming the judgment of the Court below, upon the evidence, that it was not included in the plaintiff's conveyance, nor was in his exclusive control; that the facts were plainly insufficient to support the bill, which was properly dismissed.

Street, for appellant.
Meredith, Q. C., for respondent.

Ch'y] [March 2.

HARVEY v. STUART *et al.*

Partnership—Evidence.

The plaintiffs filed their bill against the defendants, T. and S., and three others, charging that a partnership existed amongst them, and alleging that all parties had formed a plan for building an elevator; that it was intended to form a joint stock company, but in order to secure business at once that the plaintiffs had been authorized to borrow money on anticipation for the purpose of carrying out the scheme. This they did upon their own responsibility, and the elevator was built and worked, but the efforts to form a joint stock company failed, and they now asked that the alleged partnership be wound up. Various meetings of the parties took place, but they were informal, and certain minutes produced were set up by the plaintiffs as correct minutes of the meetings by which they sought to implicate the defendants. The minutes, besides bearing evidence of incorrectness on their face, were proved to be unreliable and to have been made some time after the meetings. The defendants set up that the plaintiff had not been authorized by them to raise money, but that while there was every prospect of success that the plaintiffs were anxious to take the risk upon themselves and secure the expected benefits, and that it was only after the venture proved a loss, and that they had to disburse largely, that they sought to make the defendants contribute. The bill was dismissed at the hearing as against all the defendants except S. and T., and a decree was made declaring that the plaintiffs and S. and T. were as between themselves jointly and severally liable for the money expended and liabilities incurred in and about erecting the elevator, &c. The defendants, S. and T., appealed from this decree. The whole question was one of fact.

The court was equally divided BURTON and