

MIDDLETON, J.

MARCH 21ST, 1912.

RE MCKINNON.

*Will—Construction—Restraint upon Alienation—Invalidity—
Hypothetical Question—Contingent Event.*

Motion by the executors of the will of S. F. McKinnon, deceased, for an order, under Con. Rule 938, determining questions arising upon the construction of the will.

J. Bicknell, K.C., and W. H. Wallbridge, for the executors and the widow.

N. W. Rowell, K.C., for Mrs. Miles and her husband and sons.

F. W. Harcourt, K.C., for the unborn and as yet unascertained class entitled to take in certain contingencies.

MIDDLETON, J.:—The sole question argued before me is the effect of clause 36 in the will: "Should any legatee or beneficiary under this my last will and testament . . . in any way hypothecate mortgage pledge sell transfer or assign any interest benefit legacy bequest or advantage in which the said legatee or beneficiary is or may be in any way interested or entitled to hereunder then I will and direct that immediately thereupon any benefit advantage legacy or bequest to such beneficiary or any person through him or her shall be forfeited and the same shall revert to my estate and form part of the corpus thereof and such beneficiary shall be cut off entirely from receiving any benefit or advantage under this my last will and testament."

The scheme of the testator's will is unusual. He first gives his dwelling-house and furniture to his wife for life, and then devises the residue of his estate to trustees for investment, and out of the income directs payment of \$12,000 annually to his wife for life. He makes a number of smaller legacies and annuities, and directs that on the 1st May, 1921, or upon the earlier decease of his wife, the accumulated estate shall be distributed or partly distributed. Those entitled to take are the daughter and her sons; but, in certain events, the estate is to be distributed in equal shares among the heirs-at-law of the testator and his wife.

The question argued is the validity of the restraint upon alienation found in the clause above quoted.

No good purpose would be served by adding to the confusion at present existing upon this subject, by any attempt to analyse and reconcile the decisions. I can only conclude that