

refer, was decided four years after *Earls v. McAlpine* and about ten years after *Re Macleay*, and is only one of a number of decisions which may be cited in support of the validity of such a restraint.

In 1902 *Blackburn v. McCallum*, 33 S.C.R. 65, was decided by the Supreme Court, and a restraint against any kind of alienation of a vested interest for twenty-five years was held to be a total restraint and so void, and it may be said that the authority of *Earls v. McAlpine* was greatly shaken by that judgment, though perhaps it was not overruled. This important decision perhaps lost some of its weight, because, while five judges sat and three wrote judgments, the judgments proceeded upon somewhat different lines of reasoning, and it is hard to state just what arguments convinced the Court. The result, however, is not in doubt, namely, that a restraint on alienation of any kind for even a limited period is nevertheless a total restraint while it lasts and so void.

Blackburn v. McCallum did not, however, set this matter at rest; cases still arose, to some of which you refer, but the subject again came before an Appellate Court in *Hutt v. Hutt* (1911), 24 O.L.R. 574. There lands were devised to George A. Hutt but were not to be sold to any one but J. E. Hutt for \$1,400 during the latter's life; and so the power to dispose of a vested estate was made dependent solely on the caprice of J. E. Hutt during his life. He might not buy, and if so, the owner could not dispose of his own lands. The Court held the restraint void, and overruled *Earls v. McAlpine* in case the Supreme Court had not already done so. It is upon these authoritative cases of *Blackburn v. McCallum* and *Hutt v. Hutt* that the decision of *Re Ferguson and Rowley* is based, and it is submitted that notwithstanding the many earlier conflicting and irreconcilable decisions, it must now be considered as settled that a condition restraining the alienation of a vested estate otherwise than by will is void as being a total restraint on alienation.

SHIRLEY DENISON.