

covering sale, lease, mortgage, or testamentary disposition. According to *Attwater v. Attwater*, 19 Beav. 330, 336, if the testator intends to impose this fetter—that, if the brother will not buy, the devisee is not to be at liberty to sell the property to any one—such a condition is void and repugnant to the nature of the estate conveyed. On this point *Attwater v. Attwater* has not been impeached. See *In re Macleay*, L.R. 20 Eq. 186, at p. 192. The validity of the restriction is sought to be supported by reading the will as if the clause “during the lifetime of John and Nicholas” controlled all the clauses of the restriction. But, even so, it appears to me that the authorities are against regarding this as a permissible qualification of the restraint. In *Attwater v. Attwater*, though not so expressed, it is obvious that the extent of the fetter was during the lifetime of the devisee and the brother—their joint lives.

When it was submitted from the text-books, *In re Dugdale* (1888) 38 Ch. D. 176, 179, that a total restriction of alienation for a limited time may be good, the comment of Kay, J., was, “There is no decision to this effect.”

On the other hand, *In re Parry and Daggs*, 31 Ch. D. 130, 134, Fry, L.J., said: “The courts have always leant against any device to render an estate inalienable”; and when the form of the devise was to fetter the power of alienation during the lifetime of the testator’s son, to whom the land was given, the court held it was an illegal device.

*In re Rosher*, *Rosher v. Rosher*, 26 Ch. D. 801, decides that a condition in restraint of alienation annexed to a devise in fee, even though limited to the life of another living person, is void as being repugnant to the nature of a fee simple. And this was followed by MacMahon, J., in *Heddlestone v. Heddlestone*, 15 O.R. 280.

*Earls v. McAlpine*, 6 A.R. 145, to the contrary, was discussed adversely in *McRae v. McRae*, 30 O.R. 54, and was overruled by the Supreme Court in the *Blackburn* case, afterwards cited.

Legally and practically the effect of forbidding disposing of property to all the world except one individual is a general restraint, which is invalid, and, that being so, it was decided in *Blackburn v. McCallum* that any limitation as to time does not make it valid: (1902) 33 S.C.R. 65.

The restraint as to mortgaging in the life of the devisees is valid as to Nicholas; the other restraint as to disposal of the