

5. The condition that "the premises is never to be sold" is void, being an absolute and unqualified restraint on alienation: *Re Watson*, 14 O. R. 48; *Blackburn v. McCallum*, 33 S. C. R. 65.

6. The legacy of £10 a year after the death of Bridget Ryan to "the next kin" is void as offending against the rule of perpetuities, and as being too vague to mean anything. It might be "the next kin" of the testator or "the next kin" of Bridget Ryan, or of Bridget's father.

7. The payment of £10 each year to Bridget Ryan, now O'Keefe, is a lien or charge upon lot 12.

8. This question is not, strictly, a question for the Court. Any one taking the land must take it with the burden.

Question 9 is in the same position. I take it the land must be sold subject to the charge.

The circumstances of this case are very exceptional, and it is ordered that in any event the costs of the official guardian be paid by the administrators de bonis non.

MEREDITH, C.J.

FEBRUARY 7TH, 1905.

WEEKLY COURT.

RE BUNYAN AND CANADIAN PACIFIC R. W. CO.

Contract—Assignment—Payment for Work Done—Estimates—"Moneys Due"—Moneys Retained as Guarantee—Moneys Payable to Contractor—Claims of Lien-holders, Assignees, and Creditors—Priorities—Marshalling.

Appeal by the Bank of Ottawa from a report of a local Master upon a reference to ascertain the respective rights of the claimants to a fund, and to settle their priority and adjust their claims with respect thereto. The fund consisted of a sum of money owing by the railway company to Michael G. Bunyan for work done on the railway under a contract. The fund was claimed by mechanics' lien holders, persons claiming under assignments of the whole fund or part of it, and Division Court garnishing creditors.

On 27th May, 1904, the Master reported that the whole fund available for distribution was \$5,513.24; that \$1,756.90 should be distributed among lien-holders; \$1,381.75 among certain assignees; \$100 paid to a garnishing creditor; and \$1,824.77 to the Bank of Ottawa.