

The Ontario Weekly Notes

Vol. III.

TORONTO, APRIL 24, 1912.

No. 32.

COURT OF APPEAL.

APRIL 15TH, 1912.

*RE MOUNTAIN.

Will — Construction — Secured Debts—Postponement of Payment—Payment out of Accumulated Income—Rights of Creditors—Exoneration of Property Charged—Charitable Trust in Respect of Lands Charged—Transfer after Payment of Charges—Condition—Creation of Bishopric within Long Period—Gift over to Charity—Rule against Perpetuities—Vested Gift Subject to be Divested—Suspended Gift—Valid Charitable Bequests—Restraint upon Alienation.

Appeal by certain of the next of kin of the testator from the judgment of BOYD, C., 2 O.W.N. 246.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

J. A. Macintosh, for the appellants.

Glyn Osler, for other next of kin, in the same interest as the appellants.

Travers Lewis, K.C., and J. W. Bain, K.C., for the Synod of the Anglican Diocese of Ottawa.

D. C. Ross, for Bishop's College, Lennoxville.

R. Smith, K.C., for the executors.

Moss, C.J.O.:—This is an appeal by certain of the next of kin of the testator, the Rev. Jacob Jehoshaphat Salter Mountain, D.D., from the judgment pronounced by the Chancellor of Ontario upon two of several questions raised by the executors and executrix of the will, under Con. Rule 938, as enacted by Con. Rule 1269. The questions were: whether, if the executors were obliged to pay debts or any part of debts secured on the testator's real or personal estate otherwise than out of income, the

*To be reported in the Ontario Law Reports.