

FALCONBRIDGE, C.J.

DECEMBER 21ST, 1904.

WEEKLY COURT.

RE TINNING AND WEBER.

Vendor and Purchaser—Title to Land—Conditional Devise over to Children of a Named Woman—Conveyance by Existing Children—Possibility of Birth of more Children—Presumption from Age of Woman.

Motion by Samuel Weber, purchaser, under the Vendors and Purchasers Act, for an order declaring that the objection to the title of the vendor, Bessie Jane Tinning, that she had not obtained a title in fee simple to the lands in question under the will of her mother, Charlotte Hornibrooke, and conveyance to her of the interests of John B. Tinning, Charlotte W., J. R. H. W., R. L. W., and Mabel W., had not been satisfactorily answered by the vendor, and that it was a valid objection to the title.

By the will of Charlotte Hornibrooke, the land in question was devised to the husband of the testatrix for life, and then to a daughter (the vendor), for life, with remainder to that daughter's son John B. Tinning, in fee, subject to a devise over to the children of Mary L. W. in the event of John B. Tinning dying without issue. The husband of the testatrix was dead. John B. Tinning had had issue, and he and the existing children of Mary L. W. had conveyed to the vendor. Mary L. W. was a widow, 54 years of age, and her children were all of full age.

J. T. Richardson, for purchaser.

N. F. Davidson, for vendor.

FALCONBRIDGE, C.J.—The interests of the existing children (all being of age) of Mary L. W. have been conveyed to the vendor, and the only question is whether the Court ought to act on the presumption that there will be no further issue of her body. There is no medical evidence nor any statement of her physical condition.

She was born on 7th August, 1850, and there was an interval of several years between the birth of her last child and the death of her husband.

Under these circumstances, it is clear on the authorities that the vendor is entitled to judgment. In *Browne v. Warnock*, 7 L. R. Ir. 3, the title was forced on an unwilling purchaser, and that decision is approved of in *Dart*, 6th ed., vol. 1, p. 391. Mr. Armour (*Titles*, 3rd ed., p. 144) thinks that as title has been registered upon a presumption of no