

SINGLE COURT.

HON. MR. JUSTICE BRITTON.

NOVEMBER 8TH, 1912.

LANE v. BEACHAM.

4 O. W. N. 243.

Vendor and Purchaser—Will—Restraint on Alienation—Not Intended to be Absolute—Vesting of Interests in Remainder—Objections Held Valid—No Costs.

Vendor and purchaser application. Vendors were widow and children of deceased owner of lands, the widow being unmarried and the children all of age. Purchaser urged two objections to title: (1) That deceased had created a valid restraint on alienation by clause 5 of his will providing: "Furthermore, I do not allow my executors to let any lands be sold, only to my own heirs—they may buy or sell to each other"; and (2) That the children had no vested interests to dispose of. The will gave a life estate to the widow till her death or remarriage, on either of which events it was to pass to the children absolutely, and clause 6 added: "Should any of the boys marry and have heirs, the heirs shall claim their parents' share."

BRITTON, J., *held*, that in view of the wording of the whole will, the first objection was invalid, but the second should be given effect to. Declaration that vendors could not make title, no costs.

A vendor and purchaser summons in the matter of sale of N. ½ lot No. 7, second con. of South Dorchester south of the river Thames, county of Middlesex.

I. C. Heyler, for the vendors.

M. D. Fraser, for the purchaser.

HON. MR. JUSTICE BRITTON:—This property was owned by the late Henry Johnston who died on the 1st December, 1886, and whose will was made on the 21st June of that year.

The executors and beneficiaries under the will have entered into an agreement with John Beacham for the sale to him of the land above mentioned.

There was personal property sufficient for payment of all debts of the deceased, and all such debts have been paid. An only daughter was left a legacy of \$1,500, payment of which by the sons was directed by testator although the testator did not in terms leave to the sons property out of which payment was to be made. This legacy has been paid. The widow and all the children of testator are living. The widow has not married. The children are all