cation would be made before the Judge in his Chambers on Wednesday the 3rd of February, 1869, at 11 o'clock a.m. In consequence of the absence of the Judge on that day, no proceedings were then had. On the following day however both parties appeared by their counsel, when an appointment was made for the 16th February. Mr. Foley on behalf of Mrs. Sheldrick, the mother of the minors, raised the following objections.

1. That the application is informal and incorrect, in this, that there is no affidavit of the witness to the signatures of the infants, and further, that the witness should have been personally present for examination.

2. That the proceedings of to-day are illegal, not being in accordance with the written and printed notices.

3. That the notice served upon the mother is inconsistent with the notice published, in this, that it contains an addition viz, "or so soon thereafter as counsel can be heard" and that both notices should conform.

4. That no such notice as the statute requires of any proceeding to be had this day, has been given.

5. That the 20 days' notice required by the statute has not been given.

6. That the security required by statute has not yet been given.

7. That no reason has been assigned why the children should be removed from the care of their natural guardian.

8. That the affidavits are not entitled in any cause.

9. That the papers and affidavits filed, show that the mother had been legally appointed administratrix &c., and therefore had the legal right to the administration of the estate.

10. That the real estate is subject to Mrs. Sheldrick's dower.

For these reasons she objects and protests against the appointment of Mr, David Hunter as guardian of these children, believing it would be detrimental to their moral and material interests.

Livingstone on behalf of the infants urged, that as administratrix, Mrs. Sheldrick had no control over the real estate; that the petition from the minors shows their desire that a guardian should be appointed; that it is unnecessary to assign any special reason, and that Mr. Hunter is their nearest of kin; that the 20 days' notice is proved by the affidavit on file, and that in consequence of the absence of the Judge on the day named in the notice, that counsel could not be heard, but that on the opening of Chambers on the following day, the further hearing was adjourned to this day.

Judgment was deferred until the 1st March, when the following judgment was delivered.

Wilson, Co. J.—Having carefully examined the Act relating to guardians, with the Rules and Orders framed by the Judges appointed under the 14th Section of the Surrogate Courts Act of 1858, and having also considered all the objections and arguments of counsel, I have come to the conclusion that the contesting party is not properly before the Court until she has filed a caveat. I threw out a suggestion to this effect, when the parties were before me on the 16th ult., but no caveat has yet been filed. The proper practice appears to me to be, that in the event of the mother, or any one else objecting to the appointment proposed, it is for them to file a caveat with the Surrogate Registrar; *then*, when the application is made, the party contesting, must be warned to appear on some day to be named by the Judge, who will then hear the parties and decide the matter, either on affidavits, or he may take evidence *viva voce* if he thinks it advisable so to do.

With reference to the objection raised by Mr. Foley that by the printed and written notice, the application in this matter should have been made to me at my Chambers on Wednesday the 3rd of February, 1869, at 11 o'clock in the forenoon, and that as no such application was then made, therefore any subsequent application or proceeding would be irregular and illegal. I have no doubt that I had full power and authority to receive and entertain the application on the first day I was in Chambers, although this was after the day named in the notice. I had received no intimation of this appointment, neither had my convenience been consulted in any way, and if counsel will arbitrarily make appointments for me, they must submit to occasional disappointments. By the 3rd Section of the Act respecting the appointment of Guardians it is enacted, that after proof of 20 days' public notice of the application &c., the judge may appoint, &c. Now the usual form in such cases is to the effect that the person giving the notice, will apply to the Judge after the expiration of 20 days, &c., without naming any day or hour, and the application may in fact be made at any time after the period has expired, but even if a day has been named, (as in the present case). I am still of the opinion that it is immaterial whether the Judge is applied to on that particular day or not.

Several objections raised by Mr. Foley were overruled by me at the time, and as to his 7th, that no reasons have been assigned in the application for removing the minors from the care of their mother, I need only say that neither the Statute nor the Rules require such statement, and with reference to the objection that the appointment of Mr. Hunter would be detrimental to the moral and material interests of the infants, I can only repeat what I have already said, that to raise this issue properly, a caveat should have been filed as I suggested, when this allegation might have been fully investigated. In the absence of any evidence as to the unfitness of the proposed guardian, and from my own knowledge of his character and position in life, I am of opinion that Mr. Hunter, the paternal uncle, and next of kin should, on furnishing the necessary security, be appointed Guardian as prayed for.

The minors are of age to choose their own guardian, and the person of their choice, it appears to me, should be appointed, except it be clearly established, either that he is unfit, or that there are other good grounds of objection to his appointment. The second marriage of the mother, to a man who has children of his own, would in my opinion, constitute a good reason why *she* should not be appointed as guardian, but as she has made no application, and has filed no caveat, I must decide that the uncle, as next of kin, and the choice of the minors, is entitled to letters of guardianship.

The usual order was then made.