

“5. In the absence and in lieu of such consent, an order signed by a High Court Judge or County Court Judge, or the certificate of the official guardian approving of and authorising the caution to be registered, which order or certificate the Judge or official guardian may make. . . .”

Section 15 deals with the effect of the caution:—

“15. In case of such caution being registered or re-registered under the authority of the preceding section, such caution shall have the same effect as a caution registered within 12 months from the death of the testator or intestate, save as regards persons who in the meantime may have acquired rights for valuable consideration from or through the heirs or devisees or some of them; and save also and subject to any equities on the part of the non-consenting heirs or devisees, or persons claiming under them, for improvements made after the expiration of 12 months from the death of the testator or intestate, if their lands are afterwards sold by such executors or administrators.”

Section 16 gives to the executors or administrators in whom the estate is vested as full power to sell and convey “for the purpose, not only of paying debts, but also of distributing or dividing the estate among the parties beneficially entitled thereto whether there are debts or not, as they have in regard to personal estate,” subject to a proviso that where infants or lunatics are beneficially entitled to the estate as heirs or devisees, or where other heirs or devisees do not concur in the sale, and there are no debts, the sale shall not be valid as respects such infants, lunatics, or non-concurring heirs or devisees, unless the sale is made with the approval of the official guardian.

Two objections to the title are made:—

First, it is said that these provisions are applicable only where the devisees or heirs whose interests are to be affected are all adults.

Second, that the land having become vested in the heirs owing to the failure to register the caution, there is nothing to divest the estate or take it out of them and to transfer it to the executors.

I think neither objection is entitled to prevail.

The object of the legislation is manifest, and the language used is, in my opinion, sufficient to give effect to that object.