

The learned Judge expressed his opinion as follows :

" As to the question of the necessity of filing a caution in order to enable the executors to make a good title to the real estate included in the will of the testator, I am inclined to the opinion that the obtaining and registration of such caution is necessary.

" R.S.O. c. 110, s. 23, it is true, gives power to an executor to sell, if such power can be implied from the will. In other words it gives an authority, where no person is expressly named, to the executor. 54 Vict., c. 18, is a subsequent Act and directs that real estate not disposed of or conveyed by the executors within twelve months after death shall vest in the devisees or heirs beneficially entitled; in this case, therefore, the real estate vested in the widow at the expiration of twelve months; and she might thereafter have disposed of the same without the concurrence of the executors. It not having been disposed of by her, and she now being dead, I take it that the real estate vests by force of the statute in the residuary devisees, subject to a liability to pay thereout the pecuniary legacies, if the personal estate should prove insufficient to pay such legacies. Real estate appears to vest in the executors only provisionally for twelve months; if not disposed of by them within the twelve months their power to sell seems to terminate unless a caution is filed. The Devolution of Estates Act, R.S.O. c. 108, s. 4, vests all real estate notwithstanding specific devises in the executors to pay debts. 54 Vict., c. 18, s. 2, sub-sec. 1, expressly gives power of sale to executors of lands vested in them by force of the Devolution of Estates Act, for the purpose either of paying debts or of dividing the estate amongst the beneficiaries.

" I think the executors' power to sell in this case is better attributed to 54 Vict., c. 18, s. 2, sub-sec. 1, than to R.S.O., c. 110, s. 23. The latter provision would more appropriately lie where the real estate was devised to the executors by the will, and questions arose under the wording of the devise as to whether express power to sell was given, or where a general devise was made to the executors without an express power to sell, and the will