

is where they have through oversight or otherwise omitted to register, etc. In such cases the personal representative can quite properly make the required affidavit, viz., that he finds or believes it is or may be necessary to sell the realty under his powers and in fulfilment of his duties as such personal representative.

But take the case of a personal representative who has satisfied all the debts and performed all his other duties, except the distribution of the estate, prior to the arrival of the period of shifting. Nothing then remained for him to do but to distribute the estate among the beneficiaries. He might do this either in specie by conveying the land in the appropriate shares, or in the form of money after conversion. If the former method were decided on he might, instead of making conveyances, allow the law to vest the realty in the beneficiaries under the shifting process (assuming the shifting provisions of the Act to be efficacious), but surely having adopted either the one course or the other, he is then effectually *functus officio*. Surely after he had once performed all his fiduciary duties, and distributed the estate, and thus become *functus officio*, the law never intended that he should ever get the estate back into his hands merely that he might distribute it over again in some different form.

It is submitted that under such circumstances he could not have recourse to the belated caution procedure, for the simple reason, if no other were forthcoming, that he could not properly make the requisite affidavit that he found it might be necessary for him to sell the real estate under his powers and in fulfilment of his duties as personal representative.

Suppose the personal representative to have fully performed his duties by paying the debts of the estate, etc., and thereafter to have executed a conveyance of the realty to the beneficiaries. It would, in that case, be readily admitted on all hands that he was effectually *functus officio*, and no one would ever dream of attempting thereafter to have recourse to the belated caution procedure. And yet it is obvious that under such circumstances the position attained is precisely that which would have resulted