and that a gift over in the case of death without children of a previous taker, means death at any time without children, and not death prior to death of testator. See also Woodroope v. Woodroope, [1894] Irish R. 1; Cowan v. Allen, 26 S. C. R. 292.

Under the Devolution of Estates Act, R. S. O. ch. 127, the executors can sell, but only with the approval of the official guardian. Executors under similar circumstances could without the approval of the official guardian have sold before the amendment of sec. 16 of that Act by 63 Vict. ch. 17, sec. 17. The amending section eliminated the words "and there are no debts," and the proviso to sec. 16 now reads, "provided always that where infants or lunatics are beneficially entitled to such real estate as heirs or devisees, or when other heirs or devisees do not concur in the sale, no such sale shall 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 appointed under the Judicature Act; and for this purpose the official guardian aforesaid shall have the same powers and duties as he has in the case of infants." See Armour on Devolution, pp. 165-8.

It is contended by the petitioners that the Trustee Act, R. S. O. ch. 129, secs. 16 and 18, authorize a sale by the executors. I do not think so, as sec. 20 of that Act limits and restricts the operation of secs. 16 and 18. . . . Re Eddie, 22 O. R. 556, commented on.

If the executors cannot sell and make a good title, can the devisee . . . do so? This is not a question of distribution, it is a question of sale. Section 20 confers no power of sale. . . . I am of opinion that the intention of the Legislature was, whether these sections accomplish it or not, to provide for the sale of land for payment of debts or legacies, in every case where so charged. . . . This is the case of the devise of the testator's whole estate, charged with payment of a legacy. I think the devisee can sell, and that a good title can be made. . . .

Reference to Lord St. Leonard's Act, 22 & 23 Vict. ch. 35; Lewin on Trusts, 10th ed., pp. 530, 531, 538; In re Wilson, 34 W. R. 512; Armour on Devolution, p. 291; Bailey v. Ekins, 7 Ves. 323; In re Schnadhorst, [1902] 2 Ch. 234.

I am, therefore, of opinion that the executors and George William Parker and Violet Mitchell Campbell can make a good marketable title without joining the brothers and sisters of the late Elizabeth Tyler in the conveyance.

The costs of all parties should be paid by the estate of Elizabeth Tyler.