

2. Can the procedure relating to belated cautions be properly resorted to where there are no debts?

In discussing this branch of the subject it may be well to mention that this belated caution procedure has been quite commonly resorted to where there are no debts. It may be even said to be quite the customary practice to resort to it when occasion arises. It has repeatedly received the sanction of the Official Guardian of infants, and, though we are not aware of any case in which it has been directly approved by the Court, we think it has on many occasions come under the Court's notice without adverse comment.

In that condition of affairs it seems almost presumptuous to raise any question as to the validity of the practice, and yet, with all possible respect, the writer ventures to think there is room for grave doubt whether the procedure was ever intended to be resorted to under the circumstances mentioned, in fact whether it can under such circumstances be validly adopted. The provision of the Act, so far as it is material to the present question, is that where the personal representatives have "through oversight or otherwise" omitted to register the ordinary caution they may register a belated caution, provided they register therewith a further affidavit stating that they find or believe that it is or may be necessary for them to sell the real estate of the testator or intestate under their powers and in fulfilment of their duties in that behalf.

One readily sees why it was important that a provision of this kind should be introduced into the Act. Cases occasionally arose where, after the estate had been allowed to shift into the beneficiaries, it turned out that there were still valid claims against the estate, of which the personal representative had not been aware at the time he allowed the estate to shift. It would be eminently proper in such cases that the personal representative should be placed in a position to deal with such claims by having the estate revested in him and it was to meet emergencies of that kind, it is submitted, that the legislation was introduced. The language used seems to indicate that clearly. It