

Lee. It is admitted that the administrator, pursuant to the provisions of the said statute, obtained the consent in writing of the adult beneficiary of the estate of the said Mary Elizabeth Lee, before filing the said caution..

"Subsequently the said administrator sold and conveyed the said lot 38, plan 516, Wallace avenue, Toronto, to the vendor, with the concurrence and consent of the official guardian on behalf of the infant Mary Helen N. Lee, which consent is evidenced by the official guardian indorsing his consent to the said conveyance in the usual way.

"The vendor asserts and the purchaser denies that the said conveyance by the administrator, with the concurrence and consent of the official guardian on behalf of said infant, is sufficient to convey the said infant's interest in the lands of her mother, the intestate.

"The opinion of the Court is requested on the above."

A. C. Heighington, for the purchaser, contended that, the estate having vested in the infant, there was no provision in the Devolution of Estates Act for registering a caution after the lapse of 3 years, in the case of an infant's lands; consequently, that the administrator could not, after such lapse, convey for the infant, even with the consent of the official guardian. He cited the following passages from *Armour on the Devolution of Land*: "The provision for obtaining a consent implies a capacity in the heir or devisee to give the consent; and therefore infants and persons of unsound mind are not within the effect of this clause, and no subsequent caution could be obtained as against their interests:" p. 155. "If this reasoning is sound, it follows that no order can be made when the heir or devisee is an infant or of unsound mind. The official guardian does not act under this clause for or on behalf of infants, but as a substitute for a Judge, and only where adult heirs or devisees do not consent. It is true that by sec. 16 the official guardian is given power to approve, on behalf of infants and lunatics, of sales by executors and administrators—but only of the sales of land vested in the executors or administrators under the Act. And where the land has passed from the executors or administrators to an infant or lunatic, there seems to be no way of revesting it in the personal representative:" p. 156. He also referred to *Armour on Titles*, 3rd ed., p. 344 et seq.

W. J. Clark, for the vendor.

M. C. Cameron, for the official guardian.