alike." (The word "portion" or "share" was evidently omitted after "equal").

The testator died in 1861; his wife died in September, 1917.

The learned Judge referred to the Trustee Act, R.S.O. 1914 ch. 121, secs. 2 (*q*), 44, and 49; and said that the case was not governed by the Devolution of Estates Act nor dependent upon it; and that the executors had, under the Trustee Act, sec. 44, and the survivor of them had, under sec. 49, power to convey without the concurrence of the beneficiaries. There was a trust for sale.

It was argued that the property vested immediately upon the death of the testator; but the provision of the will that the land could be sold and the proceeds invested in other property, at any time during the life of the widow, was inconsistent with that conclusion.

It was desirable that the title of the purchaser should be as free from doubt as possible; and, although the surviving executor has power to convey independently of the Devolution of Estates Act, R.S.O. 1914 ch. 119, and that this is a case excluded by sec. 14 of that Act, yet for the greater security of the purchaser, and to facilitate subsequent conveyances, it was right that a caution should now be registered—no caution having yet been registered—and an incidental or preliminary order for the registration of a caution should be made under sec. 15 (1) (*d*). And, to secure the additional protection of this Act, and particularly of sec. 23, the purchase should be carried out in the manner authorised by the Act.

The sale appeared to be one "made for the purpose of distribution only" (sec. 21 (1)), and to wind up the estate. An affidavit should be filed shewing that the land is being sold for a fair and reasonable price. The order should dispense with the concurrence of the interested adults (sec. 21 (2)); and, if there were interested infants, should dispense with the consent of the Official Guardian (sec. 19); and might express approval of the sale.

Reference to In re Koch and Wideman (1894), 25 O.R. 262; Farwell on Powers, 2nd ed., p. 457.

As to the distribution of the proceeds of sale, the testator's primary intention was to treat his brothers and sisters (of the whole blood and half blood) and his wife's brothers and sisters as one aggregate and to divide the property into as many shares as there were units in this aggregate. But he contemplated that all the beneficiaries might not be alive at the death of his wife; and, in the expression "or their heirs," "or" should be read