

their hands for not registering a caution which there was no law enabling them to register. For example, a testator may have died in 1887; yet, according to the Act, if retrospective in its operation, in 1888 the land would have become vested in the devisee because within twelve months from the testator's death no caution had been registered, which until this Act was passed there was no power enabling the personal representative to register. It will be observed that no time is limited after the Act coming into force for registering cautions relating to the estates of persons who have been dead more than twelve months before the passing of the Act; and at the same time no caution is effective unless it is registered within twelve months after the death of the deceased owner. At the same time, the statute is so ambiguously worded that it is susceptible of an *ex post facto* operation. Furthermore, the question must arise: is the Act confined to cases where there is an actual legal personal representative *in esse*, or does it extend to cases where executors have renounced, or have not taken probate, or where no letters of administration have been granted?

It may also be noted that although the last sentence in section 1 inferentially seems to assume that more than one caution may be registered, yet the Act contains no explicit provision enabling any caution to be registered after the lapse of twelve months from the death of the testator or intestate. It will therefore become a serious question with personal representatives, whether their power to deal with the realty of a deceased person can by any possibility be extended beyond two years at the very furthest from their testator's or intestate's death.

The Act, though it vests the land in the devisee, or "heir at law beneficially entitled," is silent as to whether or not he is to take free from the claims of creditors; neither does it exonerate a personal representative from liability in respect of such land, which has, under the Act, become vested in the devisee or "heir beneficially entitled."

We presume an omission to register a caution when one might be registered will render the personal representative liable as for a *devastavit*. But that liability can hardly attach to him when he is precluded by the Act from doing so.

The distinct violation of the fundamental principle upon which the Devolution of Estates Act is based by the recent Act we think is to be regretted. The paltry grievance which it was designed to alleviate is as the dust in the balance compared with the serious difficulties which the Act is likely to create.

By enabling the next of kin to acquire title without the intervention of the personal representative, a premium is offered to them to conceal from the personal representative the real assets of the deceased. This may be very easily done in many cases where a man dies intestate, or makes no specific disposition of his property by his will. He may die entitled to lands of which his next of kin may be well aware, but of which his personal representative may know nothing. The next of kin or devisee henceforward will have a distinct advantage in concealing from the deceased person's personal representative all the information they possess as to his realty, in the hope that the year may elapse without his discovering it, whereupon, by the operation of this Act, it will vest in them without his intervention, and they can thenceforward deal with it as their own.