probate of said will was granted to them on the 4th day of November, 1912, by the Surrogate Court of the county of York. The 4th paragraph of said will is as follows:—

"Should any of the beneficiaries named in this my will institute any proceedings to set aside this my will, or any paragraph or clause thereof, he or they shall thereby forfeit all his or their rights and legacies herein provided."

John and James McDevitt, brothers of the deceased Daniel McDevitt, filed a caveat against the proof of the will. By the will the residue of the estate of deceased was given to his 4 brothers, viz., James, John, Patrick and Hugh.

The question is, was the lodging of the caveat, by John and James, instituting proceedings to set aside the will or any paragraph or clause thereof, within the meaning of the above recited clause 4.

The caveat lodged stated the grounds to be,

(1) Want of testamentary capacity,

(2) that the will was executed after the testator had been declared by a Judge of the High Court to be a person of unsound mind, and

(3) that the testator was unduly influenced to make the will.

There has not been in fact the institution by any of the beneficiaries of any proceedings to set aside the will, therefore there has been no "forfeiture of any rights and legacies."

The filing of the caveat was not "instituting proceedings to set aside the will."

A caveator who states as grounds for the caveat is not obliged to proceed to proof, or to attempt to prove these. A caveat is defined as "A formal notice or caution given by a person interested, to a Court, Judge or public officer against the performance of certain judicial or ministerial acts."

A caution, or caveat, while in force, may stop probate or administration from being granted without notice to or knowledge of the person who enters it. A caveat being lodged—a warning should follow, and then if the person who lodged the caveat really intends to contest, he should cause an appearance to be entered. Even then, I do not say that the entering of an appearance would be instituting proceedings to set aside a will. It might well be that a beneficiary would desire to have the will proved in solemn form.