

THE FUTURE DEVOLUTION OF REAL ESTATE.

against the deceased, and the claimant refuses or neglects to bring a suit to recover his claim, the personal representative will be unable to distribute the estate for an indefinite period, and will have no means of obtaining an adjudication upon the alleged claim.

It is true that there is a period of limitation for actions of tort, so far as the action is against the tort-feasor, but it may be a question whether it has any application to actions against the representatives of a deceased tort-feasor. The statute, it may be argued, has constituted an entirely new cause of action, and has placed no limit on the time within which it may be prosecuted. This appears to us to be a serious blunder.

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Nor the least remarkable Act passed by the Ontario Legislature at its recent session is that respecting the estates of deceased persons. By this Act a most important change has been effected in the law of real estate—in fact, one of its distinguishing features may be said to have been almost swept away.

Hitherto one of the chief characteristics of real estate was the mode in which the fee simple descended to the heirs-at-law. It was this peculiarity which constituted the great difference between the fee simple and what were called chattel interests in land. But this point of distinction is now to a great extent abolished by the Act in question. It, however, still survives as regards estates tail.

On and after the 1st July next all estates in fee simple, or estates *pur autre vie* limited to the heir as special occupant, in any tenements corporeal or incorporeal within Ontario and whether devised by will or not, will, upon the death of the

owner, instead of descending to his heirs-at-law or passing to his devisees direct under his will, devolve upon and become vested in his executors or administrators, and be subject to the payment of his debts, and so far as such property is not disposed of by will, it is thereafter to be distributed as personal property. The widow's right of dower however is not taken away unless she elects to take under the Act; and the husband of a deceased owner may, by deed executed within six calendar months after his wife's death, elect to take his curtesy in lieu of the share he would take under the Act.

Upon this Act coming into force, therefore, the realty as well as the personality of a deceased person will, in the first place, vest in his personal representatives, who will have full power to administer both classes of property, and upon the debts of the deceased being duly paid, it will be the duty of the personal representative to convey such parts of the realty as have been devised, and are not required for the payment of debts, to the devisee, whose title, instead of coming direct under the will as heretofore, will henceforth come through the personal representative. Such part of the realty as may remain after payment of the debts of the deceased owner, and as to which he shall have died intestate, will be distributed among the next of kin of the deceased in the same manner as the undisposed of personality.

It will thus be seen that "the heir-at-law" is practically disinherited. Like Othello, his occupation is gone. He will no longer succeed directly or indirectly to the estate of his ancestor. The personal representative and the next of kin have supplanted him. The statute known as the Real Estate Succession Act is virtually repealed.

It will certainly seem rather anomalous to continue to convey land to a man and his heirs, when his heirs can by no possibility any longer have any right to