

The Canada Law Journal.

VOL. XXIV.

SEPTEMBER 1, 1888.

No. 14.

WE again remind our readers that to-day the new Consolidated Rules come into effect. It is to be observed, however, that by the Rule of 9th June, 1888, it is ordered, "That Consolidated Rules 210, 211 and 212, shall not come into force on the first day of September next, nor until the further order of this court be passed, fixing a day for the same to come into force; and it is further ordered, that until such rules do come into force, all matters of practice and procedure affected thereby shall be deemed to be in force as if the same were in substance repeated in this Rule."

THE DEVOLUTION OF REAL ESTATE.

In our July number we published the letter of a correspondent signing himself "Solicitor," respecting the operation of the Devolution of Estates Act, 1886, now embodied in R. S. O. c. 108. At that time it appeared to us that the letter contained in itself a sufficient refutation of the objections taken to the Act, and for that reason we did not think it necessary to make any comments upon it; but we have since heard that some of our readers, at all events, have taken a different view, and think that the animadversions of our correspondent are well taken.

Stated shortly, the point made against the Act is this, that the heirs or devisees are no longer able to make a deed of the land, descended or devised, to a purchaser without a personal representative being first appointed.

There is no doubt that this is the case; but is it, after all, any real objection to the Act? Let us consider for a moment what the Act was designed to effect, but before doing so, it may be well to take a glance at the state of the law before its passage.

So far as the lands of a deceased person were concerned, it must be admitted that it was in a very anomalous position. The personal representative, executor or administrator, was charged by the law to see to the payment of the debts of the deceased, but, in most cases, he had no power to deal with what was oftentimes the principal asset of the estate, namely, the lands left by the deceased. The lands passed directly to the heir, or devisee, without the intervention of the personal representative; but though the latter had no control over, and no estate in the lands, yet, nevertheless, under a judgment recovered against him alone, to which neither heir nor devisee were parties, an execution might be issued under which the lands of the deceased might be sold.