

and from a very early period in our legal history, lauds were made exigible in execution for the satisfaction of debts; and in 1886, all practical distinction between lands and goods was supposed to have been removed in Ontario by the Devolution of Estates Act.

That Act provided that thenceforth lands were to devolve on the personal representative of the deceased owner "subject to payment of debts" and so far as not disposed of by deed, will, contract or other effectual disposition "the same shall be distributed as personal property, not so disposed of, is hereafter to be distributed."

The Act appears to place realty on the same footing, as far as administration is concerned, as personal estate. But according to the decisions of the courts the appearance is illusory. The land is only, as formerly, a secondary fund, it does not stand in the same category as personalty, the latter is still the primary fund for payment of debts, and it is not till it is exhausted, that resort can be had to the land. The effect of this construction of the Act as applied to the case above referred to might be this, that the benefit by the will intended to be conferred upon the widow might be wholly defeated, which certainly is a curious way of carrying out the testator's intention, which may reasonably be supposed to have been to confer on his wife a substantial benefit and not a mere "will o' the wisp." But in reaching this conclusion we respectfully venture to doubt whether due effect has been given to the statute.

The fourth section provides that the lands of a deceased person "shall . . . devolve upon and become vested in his legal personal representatives . . . and subject to the payment of his debts; and so far as the property is not disposed of by deed, will, contract, or other effectual disposition, the same shall be distributed as personal property not so disposed of is hereafter to be distributed."

We may remark that this section is open to two constructions. The one adopted by the court which confines the concluding clause to a distribution among beneficiaries (apart from credi-