

The two systems are absolutely incongruous, and the Act is rapidly becoming equally so. Instead of having one clear and definite system of devolution of property on the death of an owner, applicable to all of his property, we are evolving a mongrel system. This, we think, is to be regretted, because we think the original Act aimed rightly at a uniform method of devolution of both real and personal estate, and every departure from, or infringement of, that uniformity, tends not to simplify, but to confuse a matter which ought to be as free from doubt as possible.

Under the Act as originally passed the title to the real estate of a deceased person must in all cases have come through his personal representative. In order to save a few pence which a formal transfer would cost, this principle was invaded, and unless the personal representative registered a caution, and from time to time renewed it, the real estate was made again to devolve as before the Act. For some unexplained reason personal representatives were by further amendments hampered in dealing with real estate, in a way in which they are not so hampered as regards personal estate.

One of the amendments made by the Act of last session seems equally retrograde in character and ill advised. The first section enables a mortgagee to foreclose a mortgage, where his mortgagor is dead, and no personal representative has been appointed, without making any person in whom the mortgagor's title is vested a party to the proceedings. It is to suffice if "the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under the provisions of this Act (the Devolution of Estates Act), to such land, or the proceeds thereof, be made defendant, and it shall not be necessary to have a personal representative before the Court unless the Court so orders." If, however, pending the action a personal representative is appointed, on whom the equity of redemption devolves, he must be made a party.

The amendment is, of course, a violation of the fundamental rule of equity procedure, that the person in whom the equity of redemption is vested must be made a party to proceedings for