

## SELECTIONS.

geniture in case of intestacy. Probably there will be little opposition to this proposal; although many will not agree with Mr. Davey's reason for supporting it. He says that "where the State makes a will for a man it should do that which a prudent person actuated by moral considerations would do." Is it not rather that the State should make such a will as it considers most for the advantage of the State that a man should make? The *rationale* of primogeniture was the keeping of landed property together. Opinions now differ as to the soundness of this policy, and if there is any general feeling that real property ought to be distributed instead of being kept together, there is no strong reason why it should not. The proposal, however, would re-open the Statute of Distributions. According to that statute, if the wife die intestate everything goes to the husband, and there are other provisions which would become more important when applied to realty. Mr. Davey, as appears from the bill which was brought in by him, and to which he refers in his letter, would not apply them bodily, but a revision of the statute in its application to real property would give rise to a very heated controversy, which it would be most undesirable to arouse. Everyone would consider himself competent to take part in the fascinating occupation of giving away other people's property, and no two persons would agree how it should be done. The difficulty about abolishing primogeniture is not that people care very much about it—to the majority of us it is a matter of indifference; but we are accustomed to it, and it would be difficult to find a general agreement upon a substitute. Upon the principles of the change there could be no valid reason why any distinction should be drawn between real and personal property; and yet most Englishmen would shrink from applying the Statute of Distributions, which was drawn on the assumption that real property would go to the heir, bodily to the inheritance of land. The extension of the Thellusson Act, so as to prohibit accumulations altogether, will probably not meet with much objection. It has no special connection with the question in hand, as the Act applies equally to realty and personalty, and it cannot be supposed that Mr. Davey when he refers to "rents and

profits" does not include the income of personal estate. Mr. Davey's next suggestion is to repeal the statute *De donis*, and thereby abolish the estate tail. We suppose he would do something more than abolish the statute, because, by merely so doing, he would revive the operation of a grant to the heirs of the body as a conditional grant, the condition of which was satisfied, so that the land might be sold, on the birth of heirs of the body. What Mr. Davey means is to turn estates tail into estates in fee-simple subject to a gift over on death under the age of twenty-one. This raises the question whether it is expedient to destroy estates tail; and the same question is raised in regard to Mr. Davey's last proposition—namely, to abolish the power of creating life interests. Mr. Davey would enable a testator to give a life estate to his widow only. This concession would seem to let in others. If a testator for his widow, why not a testatrix for her widower, and why not an intending wife for her children? If life estates are abolished in the case of realty, they must also be abolished in the case of personalty. It would be absurd, to insist, for example, that the terms of an ordinary marriage settlement should not be affixed to land but may be to personalty. The effect would be to depreciate the value of land in a way not intended by the promoters. The question, therefore, raised by Mr. Davey is whether property ought to be allowed to be tied up for a life; and the answer which he gives is that it ought not. We are able to see that in the case of land the abolition of life interests would simplify titles and be a long step towards an effective system of registration, but to make such a change with such an object would be to sacrifice substance to form. The expeditious buying and selling of land is not such an object that people should be forbidden from prudently making provision for the future. In order to substantiate his case, Mr. Davey ought to show that it is for the general benefit of society that property of all kinds should change hands as quickly as possible, and that its accumulation either in the hands of individuals or families should everywhere be discouraged. This may be true; but we doubt whether at present it obtains general assent.

It will be seen that Mr. Davey, in dis-