

will might also make the executor a trustee in regard to the realty. Administrators, consequently, had no power whatever to deal with intestates' lands, and even executors could only deal with them so far as they were empowered expressly or by implication by their testators' will, and even then, as we have said, not as executors, but as trustees.

But though the law formerly denied the personal representative any power or jurisdiction over the deceased person's lands, it nevertheless provided that upon a judgment recovered by a creditor of the deceased against his personal representative, in an action to which neither the heir nor the devisee need be a party, it was competent to proceed to sell in execution the lands of the deceased which had passed to his heir or devisee.

One effect of this anomalous condition of affairs was that whenever the personal estate was insufficient for the payment of debts, it was generally found necessary to institute a suit for the administration of the estate, or, even when it was sufficient, before the real estate could be divided between the beneficiaries a partition suit was generally necessary. So grievous did the burthen of such suits become that the former Court of Chancery endeavoured to stem the tide of expense by imposing a special provision for the payment of the costs of such suits, and in lieu of taxed costs a commission proportioned to the value of the estate and the necessary disbursements alone could be charged by way of costs. But notwithstanding even this measure of relief, it is safe to say that multitudes of estates of deceased persons were frittered away in costs, simply from the fact that there was no simple and inexpensive means of otherwise dividing them among the creditors and beneficiaries.

The Devolution of Estates Act (1886) proposed to remedy this evil by conferring upon personal representatives the same power to deal with land that they had previously in regard to personal estate.

The Act was founded on a draft bill introduced by that eminent lawyer, the newly-appointed Lord Justice of Appeal, Sir Horace Davy, into the British House of Commons on Feb. 13th, 1884, and from this draft R.S.O., c. 108, s. 3; s. 4, s-s. 1, and ss. 7, 8, are taken almost verbatim.

The Act was at first thought by some of the judges not to accomplish what it was intended to do; and although it expressly