

without leave from the refusal of a judge to award costs to a successful party in a jury case. In fact, it would seem possible, under the amended Rule, for a judge at the trial of a jury case to order the successful party to pay costs if he should think fit, though such an exercise of discretion, no doubt, would be very rare.

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### THE DEVOLUTION OF ESTATES ACT.

One of the most important pieces of provincial legislation of modern times is, undoubtedly, The Devolution of Estates Act of 1886, now embodied in R.S.O., c. 108. By that Act the whole law of real property received, in a single Act, the most important modification that it has done for years. The learned Chancellor of Ontario, commenting on this Act, said: "No greater change has been effected in the law by any recent legislation. When its far-reaching consequences are properly apprehended, it may be found that the absorption of realty by personalty tends to systematize jurisprudence in much the same way as the absorption of law by equity": *Re Reddan*, 12 O.R. 782. We have now had over seven years' experience of this statute, and it may not be amiss to take a review of the situation and to arrive, if we can, at some conclusion as to whether the change thereby made in the law has been beneficial or otherwise.

Prior to this Act, as is well known, one of the most important distinctions between real estate and personalty was that it passed directly from a deceased owner to his heirs or devisees without the intervention of the personal representative in any way. Even if land were devised to an executor for the purpose of paying debts, he took it, not by virtue of his position as the personal representative, but as a trustee. Merely as executor, he had no right to interfere with the realty at all, however deficient the personal assets of his testator might be for the payment of his debts. An executor's or administrator's duty was confined strictly to the personal estate, and any duty imposed upon an executor by the will of his testator in regard to his real estate was discharged by him as a trustee, and not as executor. Letters probate and letters of administration were confined simply to empowering the personal representative to deal with personal estate, even though the