

CORRESPONDENCE.

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Assimilation of the Law of Real and Personal Property.

TO THE EDITOR OF THE CANADA LAW JOURNAL.

SIR,—Although I agree with you that the assimilation of the law of real and personal property in every particular is impossible, I cannot help thinking that a much greater difference exists between these two branches of law than either the nature of things, or the exigencies of modern society require.

The principal cause of the dissimilarity lies in the different law of succession applicable to the two classes of property, and this difference of succession again appears to arise from the fact that, as regards personal estate, we have adopted the principles of the civil law; while as regards realty, we have adopted and perpetuated the principles of the ancient feudal law.

Now, I do not think it can be said that there is anything in the nature of either personal property or land which of itself necessitates a different mode of succession. In ancient times the exigencies of society were considered such as to require the application of different principles of succession. But the state of society now-a-days is so essentially changed, and its needs and obligations are so widely different from what they were when feudal principles first took root in our jurisprudence, that the perpetuation of those principles in this age strikes one with a sense of incongruity, somewhat similar to that with which we behold the man in armour at a Lord Mayor's show.

The feudal principle, for all practical purposes, is dead, and is no longer applicable to the state of society in which we live, and in perpetuating this diversity of descent or succession, which is the product of feudalism, are we not running counter to the spirit and necessities of the times?

I think it must be admitted that, according to modern principles of mortality, a law of succession must of necessity provide for the due application of the property of a deceased person in the first place for the satisfaction of the claims of creditors upon his estate. This principle

the feudal law practically ignored, and it is only by a species of patch-work legislation of comparatively recent date that this obvious defect has been to some extent remedied. With regard to personal estate, on the other hand, this fundamental principle has always been recognised. And all the patch-work that real property law has undergone has failed to make it as efficient or as consonant with common sense as the simple rules by which personal estate is regulated.

Let us examine for a moment some of the many difficulties and anomalies which this adherence to the feudal principle of succession occasions.

1. The fact that land descends to the heir instead of the personal representative to be administered, leads to this anomaly: that the person who is charged by the law with the payment of the debts of the deceased has no power to deal with one of the chief assets of the deceased's estate, the result frequently being that estates cannot be administered to the best advantage.

2. Then we have this illogical result: a creditor recovers judgment against the personal representative, and upon this judgment issues execution against the lands of the deceased, notwithstanding the fact that the person against whom the judgment is recovered has nothing whatever to do with those lands, and notwithstanding that the person who, in the eye of the law, is the real owner of them, is no party to the proceedings.

3. The difference in the mode of succession necessitates a different rule of construction being applied to instruments affecting lands to that applied to instruments affecting personalty. The result of this has been, that great injustice in the name of law has been frequently done, and the intention of devisors has been over and over again defeated.

4. Then, again, it gives rise to many difficult questions in the administration of estates, which would otherwise rarely, if at all, arise, *e.g.*, questions as to which class of property is the primary fund for payment of debts, &c.; whether there has been a conversion of goods into land, or *vice versa*; whether a fund is pure or impure personalty or realty. If the persons entitled to both funds were identical it is needless to say that these questions