

personal property, and to that class of personal property which belonged to the deceased married woman as her separate property, and as to such property it makes a distinctly repugnant disposition to that provided for by R.S.O., c. 108, s. 5, inasmuch as it, in effect, provides that when she leaves a child or children, the husband is to take one-third (to this extent agreeing with R.S.O., c. 108, s. 5); but when she leaves no child or children, then her separate personal property is to devolve "as if this Act had not been passed," or, in other words, the whole of it is to devolve on the husband; whereas, under c. 108, he is in that event only to take one-half, and the residue is to go to the next of kin.

The question seems to be further complicated by the provisions of R.S.O., c. 108, s. 4, s-s. 1, which provides that all undisposed of real estate which devolves on the personal representative is now to be distributed as personal property undisposed of "is hereafter to be distributed."

One mode of reconciling these apparently conflicting provisions would be to confine R.S.O., c. 132, s. 23, to personal property coming under the description of "separate property," and holding that the provision of R.S.O., c. 108, s. 5, applies to all other property as to which a married woman died intestate. We doubt very much, however, whether this construction would really carry out the intention of the Legislature, for there appears to be no reason to suppose that it was ever intended that any different disposition should be made of the two classes of property. The discrepancy is probably due to an oversight on the part of the reviser of the statute, who failed to notice the discordant provisions of these two sections, and therefore failed to harmonize them.

REASONABLE AND PROBABLE CAUSE.

Considerable difference of opinion has arisen between the Queen's Bench and Common Pleas Divisions as to the functions of the judges in dealing with the question of reasonable and probable cause in malicious prosecution cases.

In one of these, *Hamilton v. Cousineau*, the judgment of the Queen's Bench was appealed to the Court of Appeal, when the judgment of the Queen's Bench Division was reversed, Burton, J.A., dissenting: 19 App. 203. This case was to have been