1. Unless tenancy by the curtesy is taken, the husband takes, since July 1st, 1886, one-third of the whole estate, real and personal, separate or otherwise, if the wife leaves a child or children or the representatives of any such; and one-half of such real and personal property if no child or other descendant survives the wife.

2 If any part of the estate is real property in respect of which the husband can and does elect to take as tenant by the curtesy, then, in addition to that estate in all land of the wife subject to that estate, the husband becomes entitled to:

(*a*) All the personalty not the wife's separate personal property; also

(*b*) All her separate personal property if no child survived her; or

(*c*) In case the intestate wife was survived by any child or children, then one-third of her separate personal property.

Sec. 5 of the Devolution of Estates Act must, I think, be taken to have superseded, if it did not repeal, sec. 20 of the Married Women's Property Act, 1884. Although such a suggestion has been made, I cannot see on what principle "separate personal property" should not be thought to be included in the words "real and personal property." A married woman's separate property is surely the first class of property which would occur to one's mind as being included. It would have been less surprising if it had been argued that the words "the real and personal property of a married woman" in sec. 5 include nothing else but separate property, the other estate of a married woman not being in so full a sense her own property. It is to be observed that if sec. 5 did not include the separate personal property of married women, so that sec. 20 of the Act of 1884 still governed the distribution of that portion of the estate of intestate married women, the anomalous result would follow that the husband, as opposed to the issue and next of kin, would be more favoured in respect of separate property than of other personal estate.

I cannot think that such a suggestion would ever have been made, had it not so happened that sec. 20 was retained in the consolidation of 1887 as sec. 23 of chapter 132. The section may not have been retained as the result of an oversight, but for convenience of reference, for it still remained important, in view of the provisions of sub-sec. (3) of sec. 4; and it has been well said by a correspondent in this journal for October, 1893 (vol. 29,