limitation if the wife leaves "issue," a word which includes the representatives of children.

It remains to consider the effect of sub-sec. (3) of sec. 4 of the Devolution of Estates Act, which provides that "Any husband who, if this Act had not passed, would be entitled to an interest as tenant by the curtesy in any real estate of his wife, may by deed or instrument in writing executed within six calendar months after his wife's death, and attested by at least one witness, elect to take such interest in the real and personal property of his deceased wife as he would have taken if this Act had not passed, in which case the husband's interest *therein* shall be ascertained in all respects as if this Act had not passed, and he shall be entitled to no further interest under this Act." It is plain that when the husband can qualify as tenant by the curtesy, and exercises the option given him by this sub-section, the Act of 1886 is ousted and the interest of the husband in his wife's real and personal property will have to be ascertained as if the Devolution of Estates Act were wiped out of the statute book.

It is difficult to see the importance of the last twelve words of the sub-section, for there is not a word in the Act to increase the interest of a husband who prefers tenancy by the curtesy to a distributive share in the real estate. As to personal property the Devolution of Estates Act is entirely in prejudice of the husband, and cuts down his interest very materially. But if the intestate left any real estate in which the husband could before have claimed tenancy by the curtesy, it would appear that he can now, by exercising the option, entirely rid himself of the additional restrictions which by sec. 5 are put upon his share in the personal property. The sub-section says his interest in the "real and personal property" of his deceased wife is then to be ascertained in all respects as if the Devolution of Estates Act had not passed, and prior to that Act, as has been shown, his interest in the personal property was his common law right to enjoy the whole, limited as to separate property by sec. 20 of the Act of 1884, formerly sec. 18 of the Act of 1859, above quoted.

It will be convenient here to summarize the results reached, after which I shall give my reasons for thinking that legislation subsequent to 1886 has made no change in the law, and also try to justify some conclusions which perhaps have been assumed without giving sufficient reason :