

course, affect the husband's right to tenancy by the curtesy; it applied only to such personalty as had been the wife's "separate personal property"; and it had no application at all unless some one or more of the wife's children survived her. The section was retained in the consolidations of 1859 and 1877, and, without any material change, it became sec. 20 of the Married Women's Property Act, 1884. This is the stage which legislation had reached when the Devolution of Estates Act was passed. The common law right of the husband to tenancy by the curtesy, and to the whole personal estate of the intestate wife, was affected only by this section, with the limited application pointed out. The state of the law at this time is important, and will be referred to a little later.

Sec. 5 of the Devolution of Estates Act, which went into force July 1st, 1886, was as follows: "The real and personal property of a married woman in respect of which she has died intestate, shall be distributed as follows: one-third to her husband if she leave issue, and one-half if she leave none; and subject thereto, shall go and devolve as if her husband had pre-deceased her."

The Act of 1859 had instituted a partial but very limited analogy between the distribution of the property of intestate wives and that of intestate husbands. Here we have (subject to the provisions of sub-sec. (3) of sec. 4, to be noted shortly) the completion of that analogy. Sec. 5 has its application whether issue is left or not, and standing by itself it is, as to personal property, the complete counterpart of secs. 5 and 6 of the first Statute of Distributions (22 & 23 Car. II., c. 10), sec. 5 of which gives the wife one-third of the personal property of her intestate husband if he left issue, while sec. 6 gives her one-half if he left no issue. The next of kin also, who would in the latter case take the other moiety, would be ascertained in the same manner as in the case of an intestate husband. The subject-matter of sec. 5 of the Devolution of Estates Act is broader than and includes that of sec. 20 of the Act of 1884, but in the manner of its application it is in part almost identical with the earlier section and in part it applies to conditions which sec. 20 is carefully guarded from touching. I have said the later section is in part *almost* identical with the earlier, for it is to be noted that under the earlier section the husband's interest is limited to one-third only when the intestate wife is survived by a child or children: the later section makes the