

ADMINISTRATION ACT AMENDMENT BILL (SECOND READING) 7 September 1922

Edith Cowan successfully moved for the passage of a Private Member's Bill to provide that whenever a child died intestate the mother should share equally with the father in any estate of the child.

Mrs COWAN (West Perth) [9.25]: In moving the second reading said: I have been asked to move this Bill in the interests of the mothers of Western Australia. They are anxious to be placed on exactly the same footing as the father in the case of sons or daughters dying intestate. I think we all now realise that no man wishes his wife to be on any different footing from himself, that is, when he comes to think about the matter. I feel sure the House will be with me in regard to this Bill, more especially when hon. Members realise it is the earnest desire of women to be placed on an equal footing with men in this respect. The measure merely asks for equality between husband and wife.

Hon. P. Angwin: Can you give us some reason why we should pass the Bill?

Mrs COWAN: The reason that the Bill is absolutely just is sufficient. During the war it was found that the want of an amendment such as the measure proposes was very detrimental in many instances to mothers who were left in a more or less dependent condition, and whose sons had died intestate. The existing law has operated unjustly in many cases. I leave the matter to hon. Members' sense of justice. I think every man has had time to look into the question generally of late years. I move—

That the Bill be now read a second time.

Mr LAMBERT: I think you would be well advised to give more reasons than you have yet given, because there are very wide principles involved in the Bill. Parliament is not moved by sentiment.

Mrs COWAN: If it is not moved by sentiment, then it should be moved by justice. I know the hon. Member interjecting feels in that respect just as I do myself.

Mr LAMBERT: Can you show where injustice has occurred?

Mr UNDERWOOD (Pilbara) [9.28]: I second the motion for the second reading of the Bill. In doing so I am not greatly worried regarding the necessity for the measure, or, as the member for Kalgoorlie (Mr Lambert) says, the justice of it. We have been living in difficult times, but times and conditions are changing. In the days of my parents it was understood that everything belonged to the man and the woman being to some extent a chattel. We now realise that the man and the woman are equal partners in the business. All that the Bill asks is that the mother shall have an equal share with the father of any money or property left by a son or a daughter who dies intestate. I do not know that it requires many words to demonstrate the fairness of such a measure. Even if the parents are not agreeing too well, still each of them is entitled to his or her share. If they are agreeing well - as they should agree - then it is all right, because they will divide between themselves anyhow. I hope the House will not adjourn consideration of the Bill, but will pass it. The principle underlying the measure is in accordance with the conditions under which we live at present. The Bill will make a mother an equal on shouldering with the father the responsibility for the children they have looked after and an equal in the result sought to be achieved by the Bill.

Hon. W.C. Angwin (North-East Fremantle) [9.31]: I support the second reading of the Bill. It is customary, however, when introducing a Bill to advance some reasons for the measure.

Mr Underwood: It does not require reasons; the Bill explains itself.

Hon. W.C. Angwin: As the member for Coolgardie (Mr Lambert) interjected, we cannot always act on sentiment. I know of instances where money has been left by a person and the father and mother have been living separately. The father was living in another part of Australia. The mother reared the family and yet, when the son died leaving some money, the mother could not get it and it went to the father.

Mr Willcock: There are quite a number of such instances.

Hon. W.C. Angwin: I thought the member for West Perth would have advanced some such instances to show why this Bill should be introduced. The measure is along the right lines and is one that we should all support. The member for Pilbara (Mr Underwood) seems to think there is no necessity to show where hardship has been worked under the existing law.

Mr Lambert: It is the first time he has been in such a reasonable frame of mind for a long time.

Hon. W.C. Angwin: Some reasons should have been given in support of the Bill, which I have much pleasure in supporting.

Mr Willcock (Geraldton) [9.33]: I support the Bill. Some cases have come under my notice which show the necessity for such a measure. I do not suppose the Bill would have been brought forward had it not been for our experiences during the war. Most young people do not think there is any necessity to take steps in anticipation of dying before their parents. We know that during the war period many young people went away and, unfortunately, were killed. They left amounts varying from £50 to £100 and in all cases that money would go to the father. If there is anyone who has been connected with the upbringing of children, who is entitled to anything, it is surely the mother. The member for West Perth (Mrs Cowan) is to be congratulated upon trying to secure equality and justice for her own sex in these matters, but the Bill does not go far enough. There are several other matters that could be included. For instance, if a man dies intestate and dies without issue, the widow only gets a certain proportion of the estate, whereas, if the wife died first, the husband would receive the whole of the estate.

Mrs COWAN: That is only when they die intestate.

Hon. W.C. Angwin: The estate could be secured by order of the court, in accordance with a measure we passed some years ago.

Mr Willcock: That is so. There is no reason why the widow should not have that benefit without expense, just as in the case of the husband. I think the member for West Perth could well have adjourned the consideration of the measure and endeavoured to provide for some of these other aspects, because women suffer under serious disabilities. I know of a case recently in which the husband died intestate, leaving an estate worth about £1,000. In that case half the estate went to a relative of the husband who had not been in communication with the family for 10 or 15 years.

Hon. W.C. Angwin: I know of a case where the wife went away and left the husband—

Mr Willcock: That may be so. The member for West Perth will have considerable support in any effort she makes to equalise the rights as between woman and man. The Bill deals with one way in which this can be achieved, but I do not think it goes far enough, especially regarding people dying intestate. If the hon. member looks into this aspect, she will be able to do a considerable amount of good for her sex.

Mr Lambert (Coolgardie) [9.35]: The member for West Perth (Mrs Cowan) should have advanced reasons for seeking the approval of the House to these amendments to the Administration Act. A striking instance came under my notice three or four years ago, when a young man was killed at the war. The mother had lived apart from her husband for 16 or 18 years. She had looked after that boy from infancy, and although the son had been dependent upon her practically until he went away to the war, she was not able to apply for probate. This is one of the details in connection with our Administration Act which suggests that there is a field for investigation. If there is a field for serious and mature thought in connection with obsolete Acts of Parliament, it is

to be found in the Administration Act for the transmission of wealth. There is no more glaring instance of stupid inconsistency and utter ignorance than the transmission of money under this Act. I believe that no person has the right to transmit wealth to another unless that person is directly or indirectly dependent upon the other individual. Some time ago there was a case in which money was to be transmitted to an individual, and it took five or six years to find a dependant to claim the money. That person was ultimately found in Scotland.

Mr J. Thomson: The best place to find him too.

Mr Lambert: Hon. members should realise that in the present state of our mineral development-and apparently the member for West Perth calls upon our conception of what is right and wrong-the whole idea governing the transmission of wealth and, side by side, the transmission of poverty, requires overhauling. Today it is looked upon as a fine thing to inherit wealth; it is looked upon as contemptible to inherit poverty. The one cannot be inherited without the other. If it is said that a man is to be allowed to accumulate and transmit wealth, it must be said equally that he will be allowed to accumulate poverty and to transmit it. Under our social system to-day, that is what is happening. The Premier may be looking for wealthy men about Perth to-day, hoping for the time when he may reduce the deficit by large amounts in probate duties. I think the field I have suggested is a just one for investigation as a source of revenue. I hope hon. Members will realise that there is a just claim for their support for the Bill. At the same time, I trust that they will realise that they are dealing with a dangerous thing when they open up the consideration of the principle of wealth transmission. They must remember that besides the transmission of wealth, we have the transmission of poverty.

Mr UNDERWOOD: I will not have any trouble with mine.

Mr LAMBERT: As a matter of fact, if the member for Pilbara (Mr Underwood) were suffering from a little wealth of knowledge, we would appreciate it. I hope the Premier or some other reformer will lay down the principle upon which wealth shall be transmitted and the principle upon which property shall not be transmitted.

Mr Underwood: I will not have any trouble with mine.

Mr Lambert: Social reformers to-day can talk of socialism, syndicalism, or any other "ism", but, getting down to bedrock, there is this difficulty to which I have referred regarding the transmission of wealth or poverty.

Mr Underwood: You cannot transmit poverty.

Mr Angelo: It is with us always.

Mr Simons: No one disputes the possession of poverty.

Mr Lambert: The member for Pilbara has probably been influenced in his attitude towards the Bill and in the more charitable state of mind he has displayed, by his friendliness with the member for West Perth. Last night we witnessed his hostility to a speech which elevated this House by reason of the high ideals the speaker dealt with. I anticipate, Mr Deputy Speaker, your objection that I am straying from the path, but I crave your indulgence.

The Deputy Speaker: Perhaps the hon. Member will speak to the Bill.

Mr Lambert: What a striking difference was presented by the attitude of the hon. Member to-night towards this Bill, when without reason or explanation he gave it his full endorsement. His attitude would have been very different had it been the Licensing Bill. I hope the Administration Act will have a proper overhaul. To-day it is laid down that a person dying and transmitting wealth shall pay a certain percentage, irrespective of whether his money is joint to a 42nd cousin or to a deserving wife and child. The Administration Act is a farce, and the sooner we review it the better. I hope hon. Members will support this Bill and that, later on, the Government will bring down a more comprehensive amendment.

The Premier (Hon Sir James Mitchell - Northam) [9.47]: The Bill constitutes a perfectly fair proposal. The member for West Perth (Mrs Cowan) said that a man and his wife should be equal. I think the wife should be regarded as being very much superior.

Mr Underwood: You are smoodging now.

The Premier: I know that if it be a matter of control in the family, the wife is superior. I have experienced it. In every walk of life women are more than holding their own.

Hon. W.C. Angwin: Do not give yourself away too much.

The Premier: Of course we cannot object to that, since we have made it possible. Probably this is the first Bill ever introduced by a woman in any British Parliament. I congratulate the member for West Perth on the reception her Bill has had in the Chamber. No measure was ever more generally approved. If only I could get my Bills as warmly accepted by the House, I would have a very much easier time. I readily support the Bill.

Mr Latham (York) [9.50]: It is proposed to distribute the estate equally between the father and the mother. Whereas most women know how to look after money, I have heard of instances of the father being a good-for nothing sort, and probably there are other instances in which it is the women who is at fault. Under the Bill the mother is to have half the estate. I remind members that after she has spent the whole of her share she will still have in common law a claim against her husband for maintenance.

Mr Underwood: The old man ought to be able to stand it.

Mr Latham: No doubt he will be. Nevertheless the point ought to be thoroughly investigated. I do not know what was the intention of the member for West Perth in not carrying the subsection of the Victorian Act through to its end. When in Committee I will move to amend that clause in that direction. It is only right that in the event of the estate being a big one a maximum should be placed on the amount which the mother may claim. In other respects I support the Bill.

Mrs COWAN (West Perth - in reply) [9.53]: In answer to the member for Coolgardie (Mr Lambert) let me say I am not asking for the transmission of poverty, but rather in some cases to lessen poverty. I welcome the suggestion that the Administration Act should be thoroughly overhauled; it would be to the benefit of women. However, I was anxious to avoid bringing into the Bill any controversial matter. The Bill is not intended as a reflection on the member for Coolgardie or any other member. It appeared to me better not to suggest that they should have brought down some such measure long ago. Like the member for North-East Fremantle (Hon. W.C. Angwin), I could give from my own experience instances of great injustice wrought through lack of this provision. However, I thought it wise to avoid controversial issues. Because of that, I am sorry the member for York (Mr Latham) proposes to move an amendment. For it will then be necessary in order to make it equal, to put the father in a position which under the Victorian Act he does not occupy. To avoid doing that, I purposely left out that provision about £500 only going to the mother; because, if the widowed mother is to be limited to the inheritance of a certain sum, why should not the father be limited in like manner, and the balance divided amongst the children in both cases? I think the Bill is quite equitable, and so I hope the member for York's forecasted amendment will not be agreed to.

Question put and passed.
Bill read a second time.

IN COMMITTEE.

Mr Stubbs in the Chair; Mrs Cowan in charge of the Bill.

Clause 1—agreed to.
Clause 2—Next-of-kin of intestate without issue to include mother:

Mr Latham: I move—

That progress be reported.

Motion put and negatived.

Mr Latham: I move an amendment—

That after "father" in line 1 of paragraph (b) "and the net value of his or her estate does not exceed £500" be inserted.

The Colonial Secretary: The amendment will spoil the spirit of the Bill. There is no justification for limiting the amount the mother might receive.

Mr Underwood: Give the mover a chance to state the justification.

Mr Latham: If an estate were worth £20,000 the mother would get the whole of it. There might be invalid brothers or sisters who, if the mother married again, would not obtain one penny piece. If the estate were under £500, it would be fair and reasonable for the mother to get it absolutely. Victoria has a similar provision in its Act of 1916.

Mrs COWAN: You are handing it to the man and not to the woman.

Mr Money: The amendment is not so simple as it appears to be. Paragraph (a) provides that whatever would go to the father, whether whole or part, must be divided equally between the father and mother. Paragraph (b), however, takes it away from the other next of kin who might be invalid brothers and sisters.

Mrs COWAN: No.

Mr Money: It does.

Mrs COWAN: The Act already provides that the father may take the whole to the exclusion of the children. Why not the mother?

Mr Money: This amendment really affects the old statute of distribution dating back to King Charles. There is nothing in the Administration Act dealing with this matter. The Committee have no desire to exclude next of kin such as brothers and sisters, but that is the effect of the amendment.

Progress reported.

IN COMMITTEE
Legislative Assembly, 28 September 1922
Hansard pp.937-939.

Resumed from the 7th September; Mr Stubbs in the Chair: Mrs Cowan in charge of the Bill.

Clause 2—Next of kin of intestate without issue to include mother:

Mr Latham had moved the following amendment:—After "father", in line 1 of paragraph (b), insert "where the net value of his or her estate does not exceed five hundred pounds."

Mr Latham: At the present time if a father is deceased and one of the children dies intestate, the mother shares equally with the rest of the family. Under this clause, if the mother married again, the whole of the estate would pass to her and out of the family. The object of the amendment is to limit the amount. If the amount does not exceed £500 it is only reasonable that the mother should share equally with the brothers and sisters of the deceased. I disapprove of a private member introducing a measure of this description. All such amending Bills should be submitted to the Crown Law authorities for report to a responsible Minister. This Bill might easily have been rushed through Committee without discussion. Paragraph (a) makes a great alteration. At present the father would get the whole of the estate absolutely, but it is now intended to remove any chance of the Money being retained for the particular family to which it rightly belongs. There is nothing unreasonable in the amendment.

Mr Money: In nine cases out of ten when a child dies and leaves property, that property would have been given to the child by its father. The object of the gift having failed, the intention probably was that the gift should revert to the donor. It is questionable whether we should make an innovation in favour of the mother. The statute of distribution was altered to some extent by the Act, inasmuch as in the case of an estate under £500 the wife or husband took the whole of it to the exclusion of the rest of the family. Victoria made an innovation on the lines of the amendment of the member for York. The Victorian Act provides that where the estate amounts to £500 or less, in the event of the person dying without wife or father, the whole of the estate shall go to the mother. I see no reason for objecting to that, but when dealing with estates in excess of £500, we have to look to many possibilities. It is quite likely that a mother might marry again.

Mr Latham: Or she might be already married.

Mrs COWAN: What about the father!

Mr Money: A big fortune might go to the mother and not a farthing of it to the sisters or brothers of the deceased. A mother might marry again and come under the influence of her second husband the whole fortune would go with her, notwithstanding that the family had probably contributed largely to accumulating the fortune. The amendment will be a sufficient innovation to the principle. Assume that the amendment is carried and that there is a family of three and an estate of £9,500. The mother would take £700 and then share with the rest. I am satisfied that the family as a family should have a more equal distribution than the suggestion that has been put before us in the Bill that the mother should have the whole of the wealth to the exclusion of the remainder of the family. That would not be fair to the family generally. I am prepared to support the amendment of the member for York.

Mrs COWAN: The member for York contended that the opinions of the responsible advisers of the Crown should be obtained on a Bill of this description.

Mr Latham: I said it should be submitted to Ministers.

Mrs COWAN: Instead of worrying Ministers with a matter of this kind, I preferred to get the opinion of the Crown Solicitor and the opinions of other authorities as well. The Crown Solicitor writes that the Bill is perfectly in order, and in answer to my inquiry he has this to say—

The Statute of Distributions, enacted in the reign of Charles II., has been amended as regards the property of a husband or wife dying intestate, not only by our own Administration Act, 1903, but wherever the statute is in force. The Bill under consideration deals with the distribution of the property of a child dying intestate and unmarried in the lifetime of his father and mother, or in the lifetime of a mother where the father is already dead. Under the Act of Charles II the father takes the whole because at the time the Act was passed a married woman was incapable of acquiring property. In the words of Macqueen, in his treatise on “the rights and liabilities of husband and wife” (3rd edition, page 284) “The disabilities of marriage entirely precluded the wife from the enjoyment of property; whatever belonged to her while single, or came to her while married, passed absolutely to the husband. What was hers became his and what was his remained his own. She could possess nothing; she could bequeath nothing at her death. Such were the rigid maxims of the English marriage law.”

Hon. P. Collier: Oh, for those happy days!

Mr Latham: Who is the author of the story?

Mrs COWAN: The Crown Solicitor goes on to write—

And as stated in Eversley on "The law of domestic relations," at page 2 of the preface— "The wife was deemed but little more than a personal chattel of the husband." But now that a married woman is capable of acquiring property in her own right, the property of a child dying intestate and unmarried, leaving a father and mother, should be divided between them as provided in paragraph (a) of the Bill. Paragraph (b) provides for the ease of a mother when the father of a child dying intestate and unmarried as dead. Under the law as it stands, the father takes the whole if the mother is dead; but the mother (the father being dead) has to share the property of her deceased child with the next of kin, each taking an equal share. If it is thought right that the next of kin should participate with the mother, then, it seems to me, it would be equally right that the next of kin should participate with the mother then, it seems to me, it would be equally right that the next of kin should participate with the father, where a child dies intestate and unmarried. I can see no reason for the distinction between a father and a mother in these circumstances.

I think the father and mother are the right people to inherit the property of the child who has died and has neglected to make a will. Most children would prefer that the property should go to the mother. Any chivalrous, nice-mannered man would wish this to be so. The mother is responsible for bringing the child into the world and nurturing that child. Who are those who think that we should keep to the days of the old statutes of Charles II., the king who was so wonderful that it is said of him, "he never said a foolish thing and never did a wise one." The English law has been brought up to date. We find that only last year a Bill was submitted to the British Parliament known as Lord Birkenhead's Bill. Clause 148, paragraphs 4 and 5, are in the terms of the Bill I have submitted to this House. This therefore should be a sufficient answer to the amendment of the member for York. If the British Parliament thinks that such legislation is good enough, then it should be good enough for this Parliament to adopt. I know of no reason why we should be behind the British Parliament. The hon. Member wishes us to do a thing which is nothing less than a retrograde step. On the subject of Lord Birkenhead's bill the Crown Solicitor writes—

The amendments of the law where a child dies intestate, leaving parents surviving, or one parent (mother or father) surviving, are also set out in the memorandum annexed to the Imperial measure.

Paragraph 4 of the Imperial statute sets out—

If the intestate leaves both parents, but no issue, then subject to the interest of a surviving husband or wife, the residuary estate of the intestate shall belong to the father and mother in equal shares absolutely.

Paragraph 5 states—

If the intestate leaves one parent only but no issue then, subject to the interests of the surviving husband or wife, the residuary estate of the intestate shall belong to the surviving father or mother absolutely.

I am only asking hon. Members to do what is right. I have other legal opinion on that subject. One I obtained from my own son, who says that the Bill is perfectly in order and who adds—

The mere fact that the amendment proposed by the Administration Act Amendment Bill, 1922, will further alter the Statutes of Distribution is not in any way an objection in law to such an amendment being made, should the Legislative Assembly approve of the same. Should the Legislative Assembly choose to repeal the Statute of Distribution in *toto* so far as this State is concerned, it is at liberty to do so, as such legislation is of a purely domestic nature.

That point was raised on the last occasion.
The opinion goes on—

The justice of the proposed amendment is so obvious that it seems difficult to understand the point of view of this objecting to it.

Mr Nicholson, a member of another place, who has agreed to take charge of this Bill when it reaches the Legislative Council, expresses this opinion—

If the intestate dies leaving no issue surviving, but leaving a widow, and say father, mother, brothers and sisters, the widow in such a case gets in the first place £500 allowed under the Administration Act 1903, and the balance of the estate after deduction of debts, etc., is apportioned as to one half to the widow and the remaining half to the father. Note the mother and brothers and sisters do not participate in such a case.

If, however, the intestate left no widow or issue him surviving, but leaving a father, mother, etc., then in such a case the whole estate goes to the father. The mother gets no share. This clearly is an inequality and injustice which should be remedied, and I am glad to learn from Mrs Cowan that a proposal is on foot to remedy this injustice.

In the State of Victoria, the unfair position in which a mother was placed has been recognised and an Act known as the Intestate Estates Distribution Act, 1916, is now in force there and alters the law whereby a father is entitled to the whole of the property of his children dying intestate and unmarried or dying without leaving a widow or issue surviving.

The Victorian Act provides that the father and mother should share equally in the case where no issue survives. This is only fair and equitable. In the case where the intestate leaves a mother surviving but no wife, husband, issue, or father, and where the net value of the estate does not exceed £500, then the whole of the estate belongs to the mother.

Sir Walter James, K.C., expresses himself thus—

The Administration Act, 1903, does modify the Statute of Distributions, and as your Bill seeks to make further alterations to that statute I cannot see how any technical objection can be raised to it.

I should think – with respect – that the House can deal with your Bill on its merits without infringing any of its Standing Orders, and without the least fear that when passed the Bill would be prejudiced by any over-riding legislation.

Many others competent to speak support my proposal. I hope the amendment will not be passed.

Hon. T. Walker: There is no question about the Bill being in order. In England there has been embodied in the legislation all that the member for West Perth is now asking for. IN our own laws real property does not now descend in the way that it did. It has become included amongst personal property, and its value is always considered in distribution. We have, therefore, radically departed from the Statute of Distribution. We also make wills for those who die without having made one. In fact, the intestate has a will already made for him. Under our Administration Act we place the man and the woman on a footing of strict equality. If the wife dies intestate, the husband gets £500 and the balance is distributed. If the husband dies, the wife takes £500, and so on. If a son or a daughter having property dies without issue and the father and mother are alive, they take even shares. If the father is dead, the mother takes it. The Bill is getting away from the old moorings where in the estimation of the law a woman had no soul. She could not hold any property until the Married Women's Property Act was passed. This Bill only follows along the lines of that Act. It declares that a woman in that sphere has a right to the possession of property and to absolute control of it, irrespective of whether she marries again or not. At present the father can take it all, but why should not the mother have the same privilege?

Hon. W.C. Angwin: Because she is more likely to be influenced, if she marries again, than the father.

Hon. T. Walker: Not at all. If it is required to safeguard property in the interests of the children, it cannot be placed in better hands than those of the mother. If there is one distinguishing feature that lifts woman above the ordinary level of man it is her love for her children.