

[HIGH COURT OF AUSTRALIA.]

THE ATTORNEY-GENERAL FOR VICTORIA APPELLANT;
DEFENDANT,

AND

THE EQUITY TRUSTEES, EXECUTORS }
AND AGENCY COMPANY LIMITED } RESPONDENTS.
AND ANOTHER }
PLAINTIFFS AND DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Married Woman—Intestacy—Distribution of estate—Share of husband where no*
1915. *children or next of kin—Married Women's Property Act 1890 (Vict.) (No. 1116),*
 secs. 4, 25—Statute of Distributions 1670 (22 & 23 Car. II. c. 10), sec. 3.

MELBOURNE,
Feb. 25, 26;
March 1.

Griffith C.J.,
Barton and
Isaacs JJ.

Sec. 25 of the *Married Women's Property Act 1890* provides that "the estate real and personal as to which any married woman dies intestate after the commencement of this Act shall subject to the payment of the duties and fees . . . and of her funeral administration or testamentary expenses and debts in the ordinary course of administration be distributable between her husband and her children or next of kin in the like manner and proportions in which the estate real and personal as to which a married man dies intestate is distributable between his widow and his children or next of kin."

Held, that the section lays down a complete and exhaustive rule, applicable to all cases in which a married woman dies intestate, and supersedes all previous rules, whether statutory or at common law.

Held, therefore, that where a woman dies intestate, leaving her surviving her husband but no children, the share of the husband is the same as that

which his widow would have taken if he had died intestate leaving no children, that is, one half and no more, and that in the event of there being no next of kin of the woman the other half goes to the Crown as *bona vacantia*.

Decision of the Supreme Court of Victoria (*à Beckett J.*): *In the Estate of Brown; Equity Trustees, Executors and Agency Co. Ltd. v. Mackinnon*, (1914) V.L.R., 535; 36 A.L.T., 66, reversed.

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APPEAL from the Supreme Court of Victoria.

Julia Brown, the wife of Samuel Hammett Brown, died on 25th September 1912 intestate, leaving real and personal estate in Victoria. She left her surviving her husband but no children. On an originating summons taken out by the Equity Trustees, Executors and Agency Co. Ltd., the administrators of her estate, to which her husband and the Attorney-General for Victoria were made defendants, a reference was made to the Chief Clerk to inquire as to who were the persons entitled to her estate. After inquiry, the Chief Clerk found that she left her husband but no next of kin her surviving. On further consideration of the summons, *à Beckett J.* made an order declaring that Julia Brown had died intestate leaving no next of kin her surviving, and determining that her husband was entitled to the whole of her estate: *In the Estate of Brown; Equity Trustees, Executors and Agency Co. Ltd. v. Mackinnon* (1).

From that decision the Attorney-General now appealed to the High Court.

Mann (with him *à Beckett*), for the appellant.

Jacobs, for the respondent Company.

Pigott and Gregory, for the respondent S. H. Brown.

During argument reference was made to *In re Lambert's Estate; Stanton v. Lambert* (2); *Martin v. Dalton* (3); *Cave v. Roberts*

(1) (1914) V.L.R., 535; 36 A.L.T.,
66.

(2) 39 Ch. D., 626, at p. 633.
(3) 1 V.L.R. (Eq.), 69.

H. C. OF A. (1); *In re Jamieson; Christensen v. Jamieson* (2); *Jamieson*
 1915. v. *Christensen* (3); *Intestates' Estates Act* 1864 (No. 230), sec. 4;
 ATTORNEY- *Administration Act* 1872, sec. 9; *Administration and Probate*
 GENERAL- *Act* 1890, sec. 8; *Married Women's Property Act* 1884; *Married*
 FOR *Women's Property Act* 1890, secs. 4, 25.
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Cur. adv. vult.

March 1.

GRIFFITH C.J. read the following judgment:—The *Married Women's Property Act* 1890 is a re-enactment of the Act of 1884 of the same name, which put the law on that subject on an entirely new basis. Sec. 25 provides that the estate real and personal of a married woman who dies intestate shall, subject to the payment of duties and fees and of her funeral administration and testamentary expenses and debts, be “distributable between her husband and her children or next of kin in the like manner and proportions in which the estate real and personal as to which a married man dies intestate is distributable between his widow and his children or next of kin.”

In my opinion, this enactment lays down a complete and exhaustive rule, applicable to all cases in which a married woman dies intestate, and supersedes all previous rules, whether statutory or at common law. The language is clear and unambiguous.

The words “distributable . . . in the like manner and proportions” correspond to and incorporate the words “distributed in manner and form following” in the *Statute of Distributions*. In that Statute the words are introductory to the words denoting the shares which the widow and children or next of kin are respectively to take of the estate of a married man dying intestate. The sense which the word “distribute” bears in that Statute is well settled, and it must bear the same meaning in the *Married Women's Property Act*.

The share which the respondent as husband of the intestate Julia Brown takes is therefore the same as his widow would

(1) 8 Sim., 214.

(2) (1907) V.L.R., 103, at p. 105; 28

A.L.T., 138.

(3) 4 C.L.R., 1489, at p. 1493.

have taken if he had died intestate leaving no children, that is, one half and no more. H. C. OF A.
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The appeal must therefore be allowed.

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Isaacs J.

ISAACS J. read the following judgment:—I agree that this appeal should be allowed. Sec. 25 of the *Married Women's Property Act* 1890 is obviously framed with a view to make a complete disposition of the intestate's property.

The whole estate real and personal is dealt with in unqualified terms. The prior claims of the public revenue, and of funeral and testamentary expenses, and of debts, are expressly mentioned as if clearing the estate of the wife preparatory to its disposal, and then, says the section, it is "distributable between her husband, and her children or next of kin," and "in the like manner and proportions," in which the husband's estate would be distributable in the converse case.

The verbiage of the section in vital particulars bears a striking resemblance to that of the *Statute of Distributions* of 1670. "Distributable" in the Victorian Act is an adaptation from "distribute" and "distribution" in the English Act; and they all mean that as to each person answering the description of a beneficiary a share in the estate is being disposed of. The Victorian phrase "in the manner and proportions" corresponds with the English phrase "in manner and form," followed by the words "part" and "portions," as referred to in sec. 3. The respondent's argument gives no real value to the word "manner," but treats the phrase as if limited to "proportions." The concluding words of sec. 25 now under consideration plainly apply *e converso* the English *Statute of Distributions* as the method of disposing of the wife's estate. That Statute, as was said in *Bacon's Abridgement*, was "in nature of a will for all persons who die intestate," and this statement was confirmed by Cairns L.C. in *Cooper v. Cooper* (1).

The *Statute of Frauds* by sec. 24 declared that the *Statute of Distributions* should not be construed "to extend to the estates

(1) L.R. 7 H.L., 53.

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of *feme covert*s that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of the said Act." Now comes the Victorian Act of 1890 which reverses that, and says that the estates of married women who die intestate shall be distributable in the same manner and proportions as their husbands' estates would, and, *mutatis mutandis*, among the same classes of persons. I am unable to see any real room for doubt in the matter.

The husband gets his statutory share, and no more. The residue, being without owner, passes to the Crown as *bona vacantia*.

*Appeal allowed. Order appealed from varied by declaring that the respondent S. H. Brown is entitled to one half only of the estate of the deceased. The appellant not objecting, costs of all parties to be paid out of the Crown's half of the estate; trustees' costs as between solicitor and client.*

Solicitor, for the appellant, *E. J. D. Guinness*, Crown Solicitor for Victoria.

Solicitors, for the respondents, *P. D. Phillips, Fox & Overend; Eggleston & Eggleston*.

B. L.