

XII.—*Impediments to Savings from Cost and Trouble to the Poor of Proving Wills.* By Alfred Webb, Esq.

[Read, 21st December, 1880.]

THE desirability of encouraging thrifty habits amongst our people is now fully acknowledged; and the admirable arrangements of the Post Office department afford ample facilities for the investment of small savings, for assurances, annuities, and banking with absolute security, such as were out of the reach of the mass of our population a few years ago. But property has its troubles as well as its advantages; and poor people are beginning to find that it is often easier for a husband, a daughter, or a son to save, than, after their decease, for wife, sister, or mother to avail themselves of the savings when most needed.

A Case in point.

I have lately had experience in such a case, and have been led to form very decided opinions as to the necessity of some change.

It is only just to remark that the officials with whom I was brought in contact in the course of the proceedings were most attentive, considerate, and anxious to expedite matters; so any fault, if fault there be, is in the system, and not in the men who work it.

A Dublin tradesman, whom I shall call Mr. X., with whom I was acquainted, died on 19th November last. He had been ill many weeks. The small sum that came in from a burial society and sick fund were little more than enough to bury him. Since his death, the wife has been living on the credit of neighbouring huxters, and the few shillings brought in weekly by some young children at work. She could do nothing until she got in the £100 for which her husband insured his life in the Post Office some eleven years ago.

A few days after his death, we applied for the money in Sackville-street, and were told to write to the "Secretary, Assurance Department, Post Office, London." This we did on 25th November.

On 1st December a reply was received, directing probate and certificate of death to be forwarded. Accordingly, the same day I went to Probate Court, Henrietta-street, with Mrs. X., and after some difficulty found the proper office—"Chief Registrar's Chamber." Mrs. X. was asked to take a seat and I was sent to the "Public Room" to purchase a set of papers, for which I paid 6d. It took about half-an-hour to fill up the forms and to swear Mrs. X. as to the truth thereof. She proved to the policy of assurance £100, and £5 household furniture and clothing. I don't know how matters would have gone, if I had not been able to find an official to identify me—the Registrar, the official—the official, me—and I, Mrs. X. We were next courteously conducted down stairs to the "Clerk of the Seat and Seal" and given in charge to a polite official. Then I had to make a duplicate copy of the declaration, which required time and care, and some experience in filling up forms. The following account was now made out:—"Grant, £1; Schedule and copy, 7s. 6d.; Receipt, 1s.; Certificate, 2s. 6d.; Engrossing Will [it contained just 90 words]

9s. ; Swearing Affidavits, 2s. ; Application, 2s. 6d. ; Total, £2 4s. 6d." I was directed to pay this in the "Stamp Distributor's" office upstairs. The clerk received the money, and gave me some papers to take down stairs to the "Rules" office. There I was given other papers, with which I returned to the "Clerk of the Seat and Seal." The "Clerk of the Seat and Seal" now retained all the documents except the declaration, which he directed me to bring, with a blank parchment form, to the Inland Revenue Office at the Custom House. All these transactions took some hour-and-a-half, and Mrs. X. and I had had enough for one day.

Next day, 2nd December, I went to Custom House by myself, and after some difficulty found the proper office—a small one in the top of the house. There sundry entries were made, the declaration was retained, and I was given two dockets. With these and my parchment I was directed down stairs to "No. 7," and after waiting for some time at one desk I was sent to another. There I signed my name on one of the dockets, further entries were made, and I was sent to another desk, where I paid £2. With a numbered docket and my parchment I was directed further down stairs to the "Stamping Office." Having found it, I handed in docket and parchment over a high counter, was told to "write amount" on the parchment, and come again in half-an-hour. As there was a good fire and I had a book I preferred waiting. The whole transaction took about an hour. Twenty minutes more took me back to Henrietta-street with the stamped parchment. I left it with the "Clerk of the Seat and Seal," and was told to return on Monday with Mrs. X.

Mrs. X. and I returned on 6th December to the "Seat and Seal" office. We were directed to the "Public Room" up stairs. Some papers were consulted, and we were asked to return next day.

We returned next day, 7th December, to Henrietta-street to the "Public Room." I was sent into the "Stamp Office" to procure a receipt form. For this 1s. was charged. I signed it, also signed my name in a book, and the probate was at length handed us. The total cost had been £4 6s. Of course I had to advance this sum. Poor Mrs. X. had not a penny. (As the whole object of the proceeding was to authorise her to receive £100 from the Post Office, might there not be a simple plan of giving credit for any necessary fees, to be deducted from the £100 before payment?) I now went to my office, made up the probate, and a certificate of death, which cost 1s., and forwarded them per post registered to the "Secretary, Assurance Department, General Post Office, London."

Mr. X.'s fellow-workman, who had watched our proceedings all through with pitying interest, when I told him I had at last sent off the probate, now exploded, and declared he would never again advise any one to put money into the Post Office Savings in any form—"Far better spend it—or keep it in an old stocking." "Why," said I, "won't the £100, even less the £4 6s., be very nice when it comes?" "Yes, it will; but do you think she would ever have got it but for you? What do poor people know about business? I tell you many of them would have to leave it there altogether, or have to pay half of it in fees, and drink, and cars, to some designing person.

Where would she get the £4 6s. ? Far better spend the money ; or, if you do save it, keep it in a box, and then whatever there is left, your wife and children will get without trouble or delay when you die."

The whole matter would, I suppose, have been more complicated and troublesome if Mr. X., besides having had the prudence to insure his life had not also had the forethought to make and execute a will leaving all to his wife.

But we had not yet got the money. On the 9th we received a letter from London, returning the certificate of death and requiring a statutory declaration before a magistrate that Mrs. X. mentioned in the probate, was widow of Mr. X. mentioned in the certificate, and that she was his lawful executrix. I could not find a magistrate who knew me until next day, when I perfected and returned the required documents.

On the 17th December Mrs. X. received from London an order on Sackville-street for the amount. And now mark the difference of procedure in the Probate Department and the Post Office. It took only some ten minutes, in one room and at one desk, to receive the money, open a bank account for a portion of it, and invest the balance in government stock.

Now nothing will more discourage savings in secure hands than the knowledge that all this trouble must be undergone to make hard-earned money or assurances available for survivors. The remarks of poor X.'s fellow-workman state the whole case. The formalities connected with this small property appear troublesome and complicated to one well used to business transactions ; what must they not be to people utterly unused to business and to whom the simplest transaction—writing a letter or procuring a post office order—is embarrassing and formidable ?

Whether for large or small properties and in simple cases I do not see why taking out probate should be made such an expensive, complicated affair. I do not understand why the Probate Court Department and the Probate Duty Department should be in different buildings, so far apart ; and why there should be so many offices, separated by so many doors, and passages, and flights of stairs.

It must strike a poor person as savouring somewhat of false pretences that government should engage to pay £100 on the death of a relative, and that then more than £4 in money should be deducted, and such troublesome circumlocution should have to be gone through before the remainder is secured.

I am therefore glad to see that this subject has attracted the attention of persons competent to suggest remedies.

Testimony and Suggestions of Competent Officials.

The following remarks are made in the *Irish Criminal and Judicial Statistics Report* for 1879, pp. 65-66 :—

"There has been an increase of 49 in the number of wills proved and letters of administration granted in 1879 at the District Registries, as compared with a falling-off of 136 in 1878, following an increase of 215

in 1877. The aggregate number at both Central and District Registries (4,643) is 1,230 above the number (3,413) in 1869. . . This number (4,643) still falls far short of 35,000, the estimated number of persons dying in Ireland in a year who could or did make a will, showing the large room there is for increased business if the proving of wills was made as cheap and convenient as it might be. The Intestate Widows Acts of 1873 and 1874 have failed to meet this evil.

"The Acts are very inferior to the concurrent and subsequent Scotch Acts, 36 & 37 Vic. c. 52; 38 & 39 Vic. c. 27. (1) The Scotch Acts provide the cheap proceeding for property up to £150. In Ireland the limit is £100. (2) The Scotch Acts extend to wills. The Irish are limited to intestacies. (3) The Scotch Acts prescribe the course to be pursued and supply the appropriate forms. (4) The Scotch Acts limit the cases by value only. The Irish, adopting a lower limit of value, excludes from the benefit of the reform those who reside within three miles of the office.

"The stringency of the Probate Court Rules check cases under these Acts. They prohibit proceedings before the Clerk of the Peace, if the person applying happens to attend with professional aid or assistance, or if a professional or other agent appears in the matter, or if an application has necessarily to be made to the Court in respect of the case, or where papers appear verified otherwise than before the Clerk of the Peace, or *in his office*, before a Commissioner of the Court of Probate.

"The reform is, besides, on too narrow a basis. Adopted on the principle of getting over the too large districts of the Probate Registries for the Poor, it falls short of the amount of localization to really meet the case of properties under £150. Instead of utilizing the Clerks of the 600 Petit Sessions Courts, giving a really local machinery for poor people, the 40 Clerks of the Peace alone are used.

"The Scotch local arrangements on the matter of proving wills are, as already shown, in advance of the Irish.

"The conferring of limited contentious probate jurisdiction on the County Courts in Ireland by the Act of 1877, lays the foundation for the Scotch system as to smaller registrars' districts coinciding with the districts of the County Courts, being adopted."

A paper on the subject was read before the Society in 1879, by Mr. George H. Smith, Barrister-at-Law, himself a District Registrar of Probate. I cannot do better than make some extracts from this thoughtful essay.

"Since 1858, under the Probate Act and Rules, any person desirous of obtaining a legal representation to a party dying within the limits of a District Registry—whether such party did or did not make a will—was empowered to apply personally at such District Registry, and on payment of a small extra amount of fees have all the requisite papers prepared and perfected for him by the District Registrar, without the intervention of any professional agent whatever. This provision, though oftentimes utilized, never was availed of to the extent which had been anticipated, simply because the additional fees on such cases made the procedure very little cheaper to the applicant than if he employed a solicitor to transact the business; but whenever the arrangement was availed of, the papers were prepared by officials duly qualified to deal with them, and well acquainted with all the technical matters essential to exist in them to constitute them valid. Now the new Acts not only reduce the fees on all grants applied for under their provisions—which is commendable enough though not needing the dignity of legislation for its adoption—but also draws a charmed circle round the office of District Registrar, and provides that for any applicant living *within* three miles from that place the old state of things must still exist, while for any applicant residing *beyond* that distance from a registry, the provisions of these Acts are operative. *Why a widow of a poor man dying intestate with £95, who lives in or about Belfast, or Derry, or Cork, should be obliged to pay court fees to the amount of about*

£2 10s. or £3 for an administration grant, while her friend resident beyond three miles from these district centres can obtain it for 13s., seems to be the most arbitrary and unjust arrangement that could be devised; and yet this is the first absurdity which strikes the reader of these Acts of Parliament.

"No wonder, then, that these Acts are practically dead letters on the statute book. They are so, not because of the stringency of the Probate Court Rules which are formed strictly upon the lines of the Acts themselves—not because of the obstructions of Probate officials, the vast majority of whom are paid by salary, and have no personal interest in driving away those small fee cases—not because of the objections of clerks of the peace, who have on the whole fairly tried to do their best in the directions laid down for them; but because the legislature has adopted an unworkable system for attaining an end useful and desirable in itself.

"Moreover, parents or minor children (or adult nephews, nieces, or grand-children) of a deceased intestate cannot by any process avail themselves of the benefit of the Acts; nor can creditors in any way call their provisions in aid: and, with a strange perversity in the legislative mind, while those Acts (applicable to both England and Ireland) make £100 the limit of assets to be dealt with under them, provided it belong to an intestate deceased, the Acts for Scotland (38 and 39 Vict. c. 41, and 39 and 40 Vict. c. 24) embraces will as well as intestacy cases and cover assets to the extent of £150."

Mr. Smith, who from his position as a Probate Court officer and barrister is so competent an authority, makes the following practical suggestions:—

"Can the boon of cheapness be retained, and a means be devised for satisfactorily securing it for the poor class of applicants really contemplated by the Acts? The answer is to my mind very simple indeed, and it is this:—

"(1) Repeal so much of these Acts as draws any line of distinction between residents in any part of a district, and so much of them as throws upon County Court Registrars any duty whatever connected with the preparation of papers to lead to these grants.

"(2) Provide that every petty sessions clerk shall be appointed an officer before whom any applicant for such a grant may attend to afford replies to certain prescribed and printed questions (such as those compiled by Mr. Galloway and detailed in the *Irish Law Times* for 1877), and by whom such information, when so obtained, shall be transmitted to the Probate Registrar of the district.

"(3) Provide that all the requisite papers shall, from such information, be prepared by the Probate Registrar, and transmitted back to the petty sessions clerk, who shall then be empowered to swear the parties to the papers so forwarded, and return them to the registrar duly perfected.

"(4) Give the petty sessions clerk, so acting, a moiety of the present regulated fees of compensation for his trouble, and let him be the party to deliver the issued grant to the applicant.

"(5) Make the Acts available by every one who under existing rules could otherwise apply for grants of the property of deceased intestates.

"These changes would secure the boon of cheapness for the applicant, afford him or her a place for making the application easily accessible without cost of travel, secure that the papers were properly and correctly filled, and give some slight pecuniary benefit to a body of officials who would appreciate the boon, and find the duty perfectly within their powers satisfactorily to perform."

In treating this subject, I do not forget the arrangements under which the Postmaster-General can, where no will has been proved, allocate savings not exceeding £50. But it is not wise to encourage

intestacy; and amongst the Instructions to Depositors should be one giving advice as to the drawing up of wills and obtaining probate.

The difficulties and annoyances I have pointed out in procuring probate in small cases may be considered but a trifling grievance, not worth attention at present in the face of questions of all-absorbing importance; but it is none the less a grievance affecting a considerable number of the representatives of 35,000 persons who are estimated to die each year under circumstances in which they have made or might make wills. Few grievances have been more carefully considered and had such thoughtful and practical remedies proposed for them as those contained in Mr. Smith's paper, which I have quoted. Grievances of this kind, which I can truly describe as serious and irritating, when they affect thousands of people, every day they continue unredressed, after an adequate remedy has been proposed by a competent authority, go to swell the current of irritation against the institutions of the country which it is desirable by all means to allay.

XIII.—*On the Cost and Delay in Obtaining Loans on Land and the high rate of Interest charged to Tenants for Loans.* By W. Neilson Hancock, LL.D. Q.C.

[Read, 21st December, 1880.]

THE failure of the potato crop in Ireland, in 1845, which led to Sir Robert Peel's cabinet adopting and carrying Free Trade, was followed by the still more extensive failure in 1846. This brought on a paralysis of credit, and so directed attention to the peculiar inconvenience of our laws with regard to loans on landed security—the delay in making out title.

When a crisis renders a commodity temporarily unsaleable, or saleable only at a great sacrifice, the laws affecting the borrowing of money become of great importance. Thus, in 1846, to meet the sudden calamity, immediate loans were required. Delay was fatal to the owner, who had gone into his usual expenditure, and not anticipating the reduction which became inevitable. Delay was equally fatal to the tenant, who had to meet part of the loss out of his investments of the savings of good years in improvements. He was offered reduction if rent were paid before a certain day, or could only escape law proceedings by like prompt payment.

From these causes the subject received an extraordinary amount of study and attention, which I observe it has not yet received from the public at the present time, and I will quote some of the authorities which I brought before this Society in 1848, just after the events happened.

The first authority is the Report of the Select Committee of the House of Lords on the Burdens of Land, made in 1846. The Committee was described by Mr. Stewart, one of the editors of an edition of *Blackstone's Commentaries*. He says:—