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CHILD MURDER (TRIAL) BILL.

HL Deb 25 May 1922 vol 50 cc756-69

756

Order of the Day for the House to be put into Committee read.

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Moved, That the House do now resolve itself into Committee.—(Lord Parmoor.)

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On Question, Motion agreed to.

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House in Committee accordingly.

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[The EARL OF DONOUGHMORE in the Chair.]

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Clause 1:

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Conviction for manslaughter in certain cases.

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1. Where a woman is charged with the murder of her infant child, and upon the trial evidence is given that at the time the offence was committed the woman had not fully recovered from the effect of giving birth to the child, the jury may convict her of manslaughter instead of murder.

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LORD MUIR MACKENZIE had given Notice to move, at the beginning of the clause, to leave out, "Where a woman" and insert "A woman who." The noble Lord said: This Amendment is not one of any particular importance in itself, but is the first of a number of Amendments that I have placed on the Paper, and I should like to say a word in explanation of the position in which I find myself in regard to them. Had the Bill come on in the ordinary course last Tuesday my Amendments would have been the only ones before the House, but at the last moment the noble and learned Lord in charge of the Bill postponed it until to-day, and in the interval the situation has very greatly changed, because the noble and learned Viscount on the Woolsack has put down a most comprehensive Amendment. It is, of course, a most valuable thing that your Lordships should have that aspect of the case presented by the Lord Chancellor rather than by a modest and insignificant person. But I hope there will be some opportunity, later on, of saying something upon the merits of his Amendment. He may not have noticed that it covers, with a great deal more, all the points to which I had wished to call the attention of the House. That being so, it seems likely that I shall not have to trouble your Lordships with my Amendments.

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I rather wished to make a sort of apology, if it was not patent on the facts what the state of things was, for putting down a lot of Amendments, and ending, perhaps, by not moving them. I have no real knowledge of the view of the position taken by my noble and learned friend, and I do not know whether I am entitled at this stage to say anything

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about it. Though it is a little anticipating what is coming before the House, I should like to say how glad I am that the Lord Chancellor's Amendment appears to be entirely sympathetic to the Bill; in fact, that he looks upon it exactly as I do—that the case of Hetty in "Adam Bede" is no longer to be treated as being exactly the same as that of Bill Sykes in "Oliver Twist." I will make my Motion pro forum.

Amendment moved— "Page 1, line 6, leave out ("Where a woman") and insert ("A woman who").—(Lord Muir Mackenzie.)" §

THE LORD CHANCELLOR (VISCOUNT BIRKENHEAD) I think the noble Lord is quite right in saying that the substance of his Amendment is proposed to be dealt with by a slightly different method in the Amendment that stands in my name. I understand he is not adverse to my Amendment, and it will be the more convenient course, perhaps, that he should withdraw his. §

LORD PARMOOR I think that would be the more convenient course. I very much appreciate Lord Muir Mackenzie's friendly attitude towards the Bill, but I am bound to say that I think it would be better to take the discussion on the Lord Chancellor's Amendment. §

Amendment, by leave, withdrawn. §

THE LORD CHANCELLOR moved to omit all words after "Where a woman" and insert — "Unlawfully by any direct means intentionally causes the death of her newly born child, but at the time when she so caused its death she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, be guilty of felony, to wit of infanticide, and may for such offence be punished as if she had been guilty of the offence of manslaughter of such child." "(2) Where upon the trial of a woman for the murder of her newly born child, the jury are of opinion that she unlawfully by any direct means intentionally caused its death, but that at the time when she so caused its death she had not fully recovered from the effect of giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide." "(3) Nothing in this Act shall limit the power of the jury upon an indictment for murder to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 60 of the Offences against the [Person Act, 1861](#)." 758 §

The noble and learned Viscount said: I have had to place on the Paper an Amendment of considerable length, but the importance of the subject and the Parliamentary vicissitudes through which successive proposals have passed are, perhaps, a sufficient excuse. One would have thought that the mischief which has been aimed at now for a period of some twenty or twenty-five years in various legislative proposals was a very simple one to comprehend, and not a very difficult one to deal with by process of legislation. But the actual history of the successive attempts has disproved an §

anticipation which would have occurred to most of us. One proposal after another has been brought forward, supported by the weight of great apparent legal authority, and has then succumbed to the criticisms with which it has been met either here or in another place.

The mischief, of course, is a very simple one. It is that, under the existing law, if a woman has given birth to a child under the circumstances contemplated by this Bill and its predecessors, and has, it has ultimately been determined, not been completely mistress of her faculties, but has been distraught in the period immediately following on the birth of the child and has done it to death, there exist no means which would avoid the necessity of imposing upon her in open Court the death sentence, which, in fact, never was carried out, which all those who listened to it in Court with its dreadful paraphernalia knew quite well would not be carried out. It has been felt by generations of lawyers and a long succession of distinguished Judges who have had to go through this form that it ought to be corrected. 759

As I have already indicated, a series of efforts has been made and none of them has been so fortunate as to meet with the approval of this House, of another place, and of the legal profession generally, and the noble and learned Lord has made a praiseworthy attempt to step into the breach with a practical proposal. I do not know whether I am right because the history of this matter is a little obscure, but I believe that this proposal was originally fathered by the noble and learned Lord with the assistance of the very high authority of the late Lord James of Hereford and the late Lord Alverstone. I do not know whether I am right in that, but I have been told that it is so. §

LORD MUIR MACKENZIE Lord James of Hereford. §

LORD PHILLIMORE Not Lord Alverstone, but Lord James of Hereford. §

LORD PARMOOR I think the Lord Chancellor is right. It was Lord Alverstone, and corrected by Lord James of Hereford. They were both interested in it. §

THE LORD CHANCELLOR I thought so. However, it is sufficient for me to say that it can be affiliated to very respectable judicial authority. I am still, none the less, in the position I occupy, bound to exercise my own judgment upon these proposals, however respectable is the authority upon which they depend, and must say quite plainly that in the form in which this proposal comes before the House I am not prepared to make myself responsible for it, or to recommend it to the House. The more I sympathise with the object of the noble and learned Lord, the more apprehensive I become of the exact form of his proposal. §

May I ask the House for a moment to look at the language of Clause 1:— "Where a woman is charged with the murder of her infant, child, and upon the trial evidence is given that at the time the offence was committed the woman had not fully recovered from the effect of giving birth to the child, the jury may convict her of manslaughter instead of murder." The generality of that language, the lack of particularity, is really almost terrifying to one who has had much experience of criminal trials. My noble and learned friend, Lord Parmoor, was so 760

extraordinarily fortunate in the practice of our common profession that he began to make an enormous fortune in civil matters at a time when most of us were confined to criminal matters at Sessions, and I do not think he was ever particularly tempted to prosecute the criminal side of our profession.

I shudder when I think of the vagueness of his language. What does it mean? It means that if a woman is charged with the murder of her infant child, and anybody comes forward to give evidence that at the time the offence was committed the woman was not fully recovered from the effect of giving birth to the child, the jury may convict her of manslaughter. I pretend to no particular authority on obstetrical questions, but I think it may be laid down in an average case that for a month or five weeks you could produce a doctor who could very reasonably give it as his opinion that the woman had not fully recovered from the effect of giving birth to the child, and, except among savage tribes, I am informed that it would be true in nineteen cases out of twenty that within four or five weeks the woman had not recovered, but non constat that the fact that she is not physically completely recovered—there may, for instance, be puerperal fever—would produce the slightest effect upon her mind which ought to have the result of excusing her from the consequences of what she has done.

I cannot help believing that the noble and learned Lord desires, and those with whom he has been so honourably associated in this matter desire, that if you get a case where, taking all the circumstances of the birth, taking the immense emotional and physical strain in combination under these circumstances, those elements in the human mind which lead to action at its decisive moment have been so deranged that there is not a free decision as between the forces of right and the forces of wrong, then that case ought to be dealt with in the way suggested in this Bill. I am sure that is what the noble and learned Lord means, but it is very difficult to put these things into any Act of Parliament.

I do not pretend that I have completely succeeded, but at least the words which I have 761 placed on the Paper do represent, in the first place, my own individual contribution, such as it is. I then submitted it for the consideration of the Public Prosecutor who, as your Lordships know, has an unrivalled experience in this branch of the law, and it has been since submitted to the judgment of the Law Officers of the Crown. They all concur in accepting the draft which I have made as a reasonable method of attempting to carry out the object of the noble and learned Lord.

Perhaps your Lordships will be good enough to allow me to read it. I propose that— "(1) Where a woman unlawfully by any direct means intentionally causes the death of her newly born child, but at the time when she so caused its death she had not fully recovered from the effect of giving birth to such child, and by reason thereof the balance of her mind was then disturbed, she shall, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, be guilty of felony, to wit of infanticide, and may for such offence be punished as if she had been guilty of the offence of manslaughter of such child." "(2) Where upon the trial of a woman for the murder of her newly born child, the jury are of opinion that she unlawfully by any direct means intentionally caused its death, but that at the time when she so caused its death she had not fully recovered from the effect of

giving birth to such child, and that by reason thereof the balance of her mind was then disturbed, the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide." "(3) Nothing in this Act shall limit the power of the jury upon an indictment for murder to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 60 of the Offences against the [Person Act, 1861](#)." I think the noble and learned Lord who is responsible for this Bill will not disagree with the effect of subsection (3) as being a proper protection against misunderstanding.

It really comes to this. In the proposal which I make the remedy conceived of by the Bill comes into operation when it appears that by reason of the non-recovery of the woman the balance of her mind was disturbed, and the only criticism, I think, which can reasonably be made—and it is quite a reasonable criticism—of the words I have prepared is that they are new words. They are not terms of art. I very deeply considered that possible objection, and I came to the conclusion that there was more reason for misunderstanding by attempting 762 to use the language which had been appropriated by prescriptive usage to insanity proper and to mental derangement produced by drunkenness, and that it was better to attempt a formula which might be the subject of reasonable judicial decision, and which seemed to give effect to that which I believe to be the intention of the noble and learned Lord and all those who have preceded him in this particular path of legal reform.

I can assure the noble and learned Lord who is responsible for the Bill in its present form that in its present form we can offer him no encouragement and no help in another place, and I must take the responsibility of saying that quite plainly. On the other hand, in the form which I suggest, if it commends itself by way of amendment to the noble and learned Lord, I cannot, of course, in the evident circumstances of the Parliamentary situation give him any distinct pledge, but I can at least go so far as to say to him it would be the desire of the Government that the Bill should become law, and that if a reasonable Parliamentary opportunity presents itself of carrying that decision into effect they will certainly not neglect it. I would suggest to the noble and learned Lord that he might very usefully consider whether these words do not carry out his real object, and may not place him in respect of a very helpful branch of our law among those who have made effective contributions to its reform. I beg to move.

Amendment moved— "Page 1, lines 6 to 11, leave out from ("woman") to end of § clause, and insert the said words.—(The Lord Chancellor.)"

LORD PARMOOR I am grateful to the noble and learned Lord for the sympathetic way in § which he has approached what is really a very difficult question, and also a very important one in the administration of our Criminal Law. I am afraid he was unduly complimentary to myself in one respect. The drafting of this Bill as presented to your Lordships is not to be placed either to my credit or discredit. In its present form it has already passed the House of Commons, and comes from the House of Commons, having gone through Grand Committee with the acceptance of the Home Secretary.

Then as regards this House. In 1909 a Bill was accepted after discussion in Committee, 763 and in Standing Committee, by the then Lord Chancellor, Lord Loreburn, the then Lord Chief Justice, Lord Alverstone, Lord James of Hereford, Lord Cross, and Lord Ashburne, and as I read the discussion in your Lordships' House the objection raised to the Bill was not that it went too far but that it did not go far enough in the direction of remedying the evils to which the Lord Chancellor has referred. It is true, as the Lord Chancellor has said, that I have not been closely connected with the Criminal Law, but for nearly thirty years I have sat as Chairman of Quarter Sessions, and although we do not deal with murder cases it gives a considerable experience as regards the general administration of the Criminal Law.

I do not propose to object to the Amendment which the Lord Chancellor has introduced. I agree that it is of the utmost importance in matters of this kind not only that the Lord Chancellor, as the head of our legal system, should be approached for advice but also that his advice should be followed, unless there is any good reason to the contrary. May I offer some observations on the form of the Lord Chancellor's Amendment. He says: "unlawfully by any direct means intentionally causes the death." I do not know what the words "by any direct means intentionally" really mean; "unlawfully causes," I think, is the ordinary form. There may be something in the additional words, but I have not been able to understand how they carry the matter further than "unlawfully causes the death."

The Lord Chancellor has pointed out what are the crucial words of his proposal. They are: "by reason thereof the balance of her mind was then disturbed." I agree that it is important in a Bill of this kind to avoid phrases which may have some technical meaning, particularly in our Criminal Law. There are two objections to the phrase "the balance of her mind was then disturbed." It would necessitate consideration of medical evidence, perhaps conflicting expert medical evidence, as regards the "balance of her mind," which should be avoided if possible. A poor woman does not want to get into the midst of a technical discussion of that kind. The Lord Chancellor talked of the physical strain; perhaps he would agree to some such words as these— "From the effect of giving birth to such child by reason of the physical and mental strain her mind has thereby been disturbed." It is difficult to say that the "balance of 764 her mind is disturbed."

That is a technical point, but what I have in my mind is that the physical and mental conditions are such that the poor woman, in these circumstances, is not completely mistress of her own actions. It appears to me that the words are too limiting and there would be a difficulty in their application. Perhaps the Lord Chancellor will consider my suggestion between now and Report. I do not think it is part of my duty, honestly desiring that the Bill should pass, to put myself in opposition to the Lord Chancellor on this matter. I know he has not only taken the trouble to consider the question very carefully himself, but he has also had the advice of Sir Archibald Bodkin, one of our best authorities on criminal matters.

May I also comment on the phrase "would have amounted to murder, be guilty of felony, to wit of infanticide." It seems to me a rather clumsy phrase, and I do not think it is necessary. Under a recent Act, I think the [Criminal Law Amendment Act](#), the distinction between felony and misdemeanour has gone. I have no further criticism to offer. I shall not oppose an

Amendment of this kind introduced on the authority of the Lord Chancellor, and I accept gratefully his assurances with regard to another place. If the Bill had not been altered at all, if the form in which it was presented to your Lordships had been preserved, it need not have gone to another place. It would have passed automatically. But I think the wiser plan is for me to accept the Amendment, reserving to myself the right, on Report stage, to bring forward again an alteration to his Amendment, which perhaps he will consider in the meantime.

LORD CARSON I need hardly say that I have followed the administration of the Criminal Law in this country for many years and I should be sorry if it was thought that the law in these cases had ever been exercised in any inhuman way. My experience has been that in cases of the kind contemplated by the Bill juries have been only too willing to reduce the crime to manslaughter, or guilty but insane, or even to concealment of birth, the three matters to which the Lord Chancellor refers in his Amendment. It is quite right to make it perfectly clear that under particular conditions not only should it not be a mere matter of the humanity of the jury but of direct law, and I am very glad the Lord Chancellor has proposed his Amendment in the form he has. § 765

Your Lordships must always take care in these cases that you are not led away by feelings of tender compassion, aroused by a certain class of case, into passing slipshod legislation which may lead to great harm. We have to take care that no woman should be allowed to be under any impression that the law mitigates her crime merely because she has gone through the process of giving birth to a child. Nothing could be worse. One knows that there is a great deal of infantile mortality which could probably, by care, be avoided, and to let a woman imagine for a moment that the law said that, because she was undergoing the infirmities resulting from having had a child, that would be in any sense, as it would be under the Bill as it was brought in here, a defence to the intentional killing of the child, would, I think, be a great calamity.

There must be some evidence—I hope the Lord Chancellor will not in any wise moderate the language that he has used—there must be and ought to be evidence that the crime when committed was the result of the balance of her mind having been disturbed. If that is shown, it is perfectly right; but to make the language more general, and to allow it to be thought that the mere natural infirmity should be allowed as a defence would, I think, be a calamity.

LORD PHILLIMORE The great matter is that this legislation should go through. It has been wanted now for a great many years, and it was, I think, only an unfortunate accident that prevented the Bill which Lord Alverstone introduced in one form, and Lord James of Hereford converted into another form—not perfect, but not far from being perfect—passing into law in 1909. If the Lord Chancellor, who is a master of legions, will get his Bill (for it is a new one) through the House of Commons, which has passed the other Bill, that is so much to be desired that one does not want to make any unnecessary difficulties. §

There are, however, two passages in this Amendment which I should like your Lordships and the Lord Chancellor to think more upon— "Where a woman unlawfully by any direct means

intentionally." I do not know how these words have been arrived at, but it seems to me 766 that it would be possible to say that a woman caused the death of her child by indirect means, and was guilty of murder, and, in that case, this enabling and saving section will not apply to her. I have been considering what words to substitute, and it has occurred to me, and perhaps the Lord Chancellor would be good enough to consider them, that the words "Unlawfully and feloniously causes" would perhaps meet the case. They seem to me to be wider, and therefore safer for the woman. Otherwise, it might happen that this very clause would not apply to the particular case to which, perhaps, of all others, one means it to apply. I do not know the phrase "by ally direct means intentionally," except as some kind of paraphrase in some text-book of the law, and I confess that I think some such words as I have suggested would be much better.

Next, I deprecate very strongly the introduction of a new crime—infanticide. What is infanticide? The slaying of a child. But you are going to use it only in a case when a mother kills her child. You suggest that there is a lower class of murder, infanticide, and somebody may come along a few years hence, and say "Be logical; you have made infanticide a lower class." I think that is really the objection which wrecked Lord Lord-burn's original Bill—that you put an infant in certain circumstances in an unprotected class or one only partially protected. I think I see the reason why it has been put in. It is not logical, perhaps, to call it "manslaughter," and therefore, instead of the Bill standing as it left the other House with the word "manslaughter," it is to be treated as a felony, punished like manslaughter. There, again, I would suggest that if it is necessary to avoid making it manslaughter you should use some such words as "Be guilty of a felony under this statute." And when you come to the second subsection, where you have something like the present provision with regard to "guilty but insane"—"The jury shall find the special verdict warranted by the statute" or "The jury may, notwithstanding that circumstance, return in lieu thereof a special verdict to the effect of this statute"—" or some such words as that. I do deprecate, for the reasons 767 which I have given, the introduction of the new crime of infanticide.

As regards the third subsection, it was outlined by the Lord Chancellor in his speech on the Second Reading. I am still of opinion that it is not necessary, but on the other hand I am quite sure that there is no harm in it. If anybody thinks it is desirable, it had much better be left in, and consequently I will give my support to it. If the Bill is to be amended in order that it may then have the support of the Government, I shall be quite content to accept the Lord Chancellor's Amendments. But I trust that, if not now, at any rate on Report, the two objections which I have mentioned, to which I have given a good deal of thought and upon which I feel very strongly, should be considered.

THE LORD CHANCELLOR The short discussion which has taken place has been entirely § helpful. With reference to the words "by any direct means," I tell your Lordships frankly that they were not in my original draft. They were inserted by the Public Prosecutor, and my general understanding is that they were founded upon some dictum in a case which, he considered, if not dealt with, might cause difficulty, but before the Report stage I will address myself much more closely to the explanation of words which I did not myself draft.

With regard to the other observation or objection made by the noble and learned Lord, Lord Phillimore, I do not think that the effect of my Amendment is to put infanticide in a lower grade of murder. The Amendment reads in this way: "notwithstanding that the circumstances were such that, but for the provisions of this Act, they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide." It is, of course, the very purpose of this Bill, and of all the legislative proposals which have preceded this Bill, enacted by the reformers who have preceded the noble and learned Lord, that infanticide shall be treated as a lower grade of criminal offence.

LORD PHILLIMORE I quite agree, only I would not call it infanticide. That is what I mean. §

THE LORD CHANCELLOR I will consider that, too. I see the noble and learned Lord's point. The noble and learned Lord, Lord Carson, has called attention to a point of greater substance, and I do not think that the progress of this debate has really obscured what I conceive to be a point of real difference. I am not prepared—and that was the object of my Amendment—to say in the case of a normal healthy woman, who has given birth to a child and who kills that child, that the mere fact that she has gone through the ordinary physical suffering of a woman in childbirth, aggravated by such additional mental suffering as a woman who has an illegitimate child may be supposed to entertain—I am not prepared to go to the length of saying that those circumstances alone constitute a ground for introducing an exception to the ordinary basis of responsibility for criminal acts, and I think the noble and learned Lord, Lord Parmoor, is in agreement with this view. § 768

You must establish some exceptional derangement and disturbance, and the precise words in which that derangement and disturbance are to be defined are undoubtedly a matter of difficulty, having regard to the obvious expediency of not using words which acquire a different atmosphere and intention in the Law Courts. I will consider, between now and Report, whether the words I have suggested can be improved in relation to the criticisms which have been made. I think the word I have used, "disturbance," is on the whole the best that can be adopted, but I will give further attention to the point.

On Question, Amendment agreed to. §

THE LORD CHAIRMAN Lord Muir Mackenzie does not move his Amendments to this clause?

LORD MUIR MACKENZIE I do not move. §

Clause 1, as amended, agreed to. §

Clause 2: §

Short title and extent. §

2.—(1) This Act may be cited as the [Child Murder \(Trial\) Act, 1922](#). §

(2) This Act shall not extend to Scotland or Ireland. §