



Women's Suffrage Pamphlets 1869-1872
 A Brief Summary of the Laws of England
 Concerning Women by Barbara L.S. Bodichon London 1869
 The Rev. F.D. Maurice on Female Suffrage 1870.
 "Spectator"
 Criminals, Idiots, Women and Minors. Is the
 Classification Sound? By Frances Power Cobbe Manchester 1869.
 Speech of Jacob Bright, Esq., M.P. on the Electoral
 Disabilities of Women London 1870
 Report of a Meeting of the London National Society
 for Women's Suffrage London 1870.
 Essay on Woman Suffrage by Mr. J.E. Howard Chesham 1870
 The Question of Women's Suffrage as it
 Stands at present. 1870
 The Progress of Women Suffrage During the Past
 Year. National secular Almanach. 1872.
 The Debate in the House of Commons on the
 Women's Disabilities Bill 3rd May 1871

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 N.S.W.S. ^ The debate in the house of commons on the women's disabilities bill, 3.5.72.
 MANCHESTER N.S.W.S. 4th annual report of the executive..., 8.II.71.
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 C.C.N.S.W.S. Leaflets, numbers I-4. Opinions of : eminent statesmen; persons; M.P.s; persons
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 HOSKINS, J.T. A modification of Mr Hare's scheme for the election of representatives.
 EDINBURGH N.S.W.S. 3rd annual meeting, 22.1.72.
 BECKER, L. The political disabilities of women.
 NAT. ASS. PROMOTING SOCIAL SCIENCE Sessional proceedings, 1871-72. Thursday, March 21st, 1872.
 ANONYMOUS The married women's property amendment act.
 N.S.W.S. The woman question; papers reprinted from "the Examiner".
 CURTIS, G.W. Report of the executive committee, 17.7.72.
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 NEW ENGLAND W.S.A. Ought women to learn the alphabet?
 HOAR, G.F. CONSTITUTION.
 N.W.S.A. Woman's right and the public welfare.
 COMMITTEE FOR PROMOTING THE MARRIED WOMEN'S PROPERTY BILL Constitution
 3rd & 4th annual reports 1870-71

Women's Suffrage Pamphlets, 1871-1872

- 4th Annual Report of the Manchester National Society for Women's Suffrage Manchester, 1871
- Woman Suffrage Opinions of Eminent Statesmen and Women's Suffrage Leaflet N° 1, N° 2, N° 4. London
- A Few Words on the Woman's Franchise Question by James Thomson Hoskins, B.A. London
- A Modification of Mr. Hare's Scheme for the Election of Representatives by James Thomson Hoskins, B.A. London
- 3rd Annual Meeting in Favour of Women's Suffrage. Nat. Society of Women's Suffrage Edinburgh 1872
- The Political Disabilities of Women. From the "Westminster Review" Manchester 1872
- The Married Women's Property Amendment Act. (National Social Science Congress 1872.
- The Woman Question. Papers Reprinted from "The Examiner." London 1872.
- The National Society for Women's Suffrage. Report General Meeting London 1872
- Women's Suffrage Tracts N° 2: Equal Rights for Women. Specd. by George William Lewis Boston 1871

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- Constitution of the American Woman Suffrage Association Cleveland O. 1869.
- Woman's Suffrage Tracts N^o 4: Ought Boston, Mass. 1870.
- Women to learn the Alphabet? By T.W. Higginson Boston Mass. 1870.
- The New England Woman's Suffrage Association. Southborough. Boston Mass.
- Woman's Suffrage Tracts N^o 6: Woman's Right & the Public Welfare by Hon. George F. Hoar Boston Mass. 1870.
- Third Annual Report: Married Women's Property Bill Manchester 1870
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Flat-bed
A BRIEF SUMMARY,

In Plain Language,

OF

THE MOST IMPORTANT

LAWS OF ENGLAND CONCERNING WOMEN,

TOGETHER WITH

A FEW OBSERVATIONS THEREON.

BY

BARBARA L. S. BODICHON.

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EXPLANATION OF SOME LEGAL TERMS USED.

ACTS OF PARLIAMENT. These are the written records of the laws of the realm.

ALIMONY. The maintenance to the wife, allowed by the law in the case of a *qualified* divorce; it is settled at the discretion of the judge, according to the circumstances of the case.

ASSURANCE is the title or legal evidence by which an estate is assured to the owner.

CANON LAW is a body of Roman ecclesiastical law, relative to matters over which that church assumed to have jurisdiction.

CHATTELS include all property, moveable or immoveable, which is not freehold, copyhold, or inheritable. They are either real or personal. Personal Chattels are all property not connected with the freehold.

CHOSE, in French, signifies a thing; and a *chose in action* is a thing of which a man has not the possession or actual enjoyment, but is floating or pending, and which he can claim by action at law.

COVERTURE. The condition of a married woman; under the cover or protection of her husband.

CUSTOM is long-established usage, and, if it be general throughout the kingdom, forms part of the common or unwritten law. *General* customs are determined by the judges, but *particular* customs, used in some towns, boroughs, or cities, are determinable by a jury. The distinction between *custom* and *prescription* is this: *custom* is a local or general usage, not annexed to any person; *prescription* is a personal usage, and not annexed to any place.

DEED. A solemn writing, or paper, or parchment, by means of which, in company with certain formalities called execution, property is, in certain cases transferred from one or more persons to one or more persons, or a contract is made by one or more persons with one or more other persons.

DOMICILE means generally the home of a person, the place where he lives and lodges, and may be seen and communicated with. The domicile of a child or minor is that of the parents. An illegitimate child, having no father in contemplation of law, follows the domicile of its mother. A married woman follows the domicile of her husband; and a widow retains the domicile of her late husband till she acquires another.

EQUITABLE ESTATE. A right of ownership recognised in courts of equity, as existing in one or more persons co-temporaneously with the recognition in Courts of Common Law of another right of ownership called the "legal estate," existing in one or more other persons.

FELONY. The graver class of crimes, such as murder, rape, burglary, arson, all (with the exception of the first) punished with penal servitude.

FEME SOLE. A single woman. Hence a married woman, who by the custom of London trades on her own account, the husband not being liable for her dealings, is called a feme sole trader, because, with respect to her trading, she is the same as a single woman.

FREE BENCH. A right of ownership acquired in certain places, by a wife on her husband's death, in one third part of his lands for her own life.

MISDEMEANOR. All crimes which do not amount to felony.

PENAL SERVITUDE. A substitution for transportation. Persons under sentence of transportation may be removed to prison or penitentiary.

PINMONEY. A provision made for the wife during the husband's lifetime. It is always the first charge on the estate, so that the husband takes subject to it. If, however, a wife permit her husband to receive pinmoney, or, which is the same thing, do not claim it, and he maintains her, she cannot, after his death, compel payment of more than one year's arrears out of his estate.

PUTATIVE. Commonly esteemed or reputed, in opposition to unquestionable.

SALIC LAW, an ancient law made by Pharamond, King of the Franks, and adopted in many European countries, by which males only are capable of inheriting. It was the existence of this law in Hanover that precluded Queen Victoria from the regal inheritance of that kingdom. The same law prevails in France under Napoleon III., the Imperial succession being limited, by decree of the senate, from male to male, by order of primogeniture, to the perpetual exclusion of females.

SESSIONS. Petty Sessions, meetings of justices, monthly or oftener, to dispose of business of a summary nature. There are General, Quarter, and Special Sessions, for graver offences.

STATUTES. Acts of Parliament.

TO SUE. To seek justice, or right, from one by legal process; to make legal claim; to prosecute in a civil action, for the recovery of a real or supposed right.

USUFRUCT. Tenure for life.

VULGAR ERRORS. We have already alluded to the erroneous belief among very ignorant people, that a man can sell his wife. There are several other vulgar errors held concerning the laws, though not particular about the laws specially applicable to women.

It is a vulgar error to suppose that first cousins may marry, and second may not; the fact is, both may marry with each other.

That persons born at sea have a right of settlement in Stepney parish.

That a lease of upwards of ninety-nine years creates a freehold.

That a dead body can be arrested for debt.

That the passage of a funeral creates a right of way.

That to disinherit a child it is necessary to leave it one shilling.

WRIT, in its proper and more extensive signification, implies a *writing* under the Queen's seal, whereby she confers some right or privilege, or commands some act to be done; but the most ordinary meaning of the word *writ* is the process connected with the origin and progress of a civil or criminal proceeding.

The celebrated writ of *habeas corpus* is a writing directed to any person who detains another, commanding him to produce the body of the detained person at such a time and place, to give the reason of his detention, and to submit to whatever the judge or court by whom the writ is awarded may think fit.

INTRODUCTION.

If it were asked what law was in France, there would be no difficulty in answering the question: you would simply be referred to the Code Napoleon. In England our laws have never been codified; we have all the disadvantages and advantages of having them in an uncrystallized form. It is very difficult to know what the law really is in many cases, as will be seen when we explain the sources of English law.

I have given the following laws concerning women as correctly as they can be given in brief and untechnical language.

The sources of Law in this country are three:—

1. Acts of Parliament, or Statute Law.
2. Reported decisions of judges upon actual matter of fact, or cases, accounts of which are stored up in books of Reports, or *case law*.
3. A limited number of narrow customs, judicially recognised as in use among the people, called *customary law*.

The term COMMON LAW is sometimes opposed to STATUTE LAW, to express law drawn from sources (2)

and (3). It arose earlier than Statute Law, and was probably, in early days, rather handed down by word of mouth from one race of lawyers to another, than strictly written down, as now, in books of Reports.

Bentham calls Common Law "judge-made law," and it is sometimes called unwritten law, because it is not written in the sense of a legislative enactment.

A rule of unwritten law is never called *a law*; we never speak of common *laws*: it is only a written law or *statute* which is spoken of as *a law*.

The term *Common Law* is sometimes opposed to *equity*, though in fact equity is a branch of *Common Law*. Equity is another kind of case-law, administered by the Lord Chancellor and his substitutes, and was, at first, introduced in order to soften the rigour and adjust the inequalities resulting from the harsh use of the *Common Law*; in legal words, the correction of that wherein the law, by reason of its universality, is deficient.

LAWS OF ENGLAND CONCERNING WOMEN.

The Queen Regnant in all respects fills the office of King; she has the same rights, prerogative and duties; and all that is said in the words of the law of the regal office, is as applicable to the Queen Regnant as to a King.

The Queen.

A Queen Consort is considered by the law as unlike other married women. She can herself purchase land and make leases, receive gifts from her husband, and sue, and be sued alone. She is the only wife in England who has these rights.

The wife of the King, *feme sole* i.e. she has the same rights and liabilities as a single woman.

LEGAL CONDITION OF UNMARRIED WOMEN OR SPINSTERS.

A single woman has the same rights to property, to protection from the laws, and must pay the same taxes to the state, as a man.

A single woman.

The statute for shortening the language used in Acts of Parliament, commonly called Lord Romilly's Act, provides that in all Acts, words importing the masculine gender shall be deemed and taken to include females, unless the contrary be expressly provided. (*See Appendix No. 1.*)

Acts of Parliament.

Has a parochial vote.

A woman duly qualified can vote upon parish questions, and for parish officers, overseers, surveyors, vestry clerks, &c.

Heiress.

If a woman's father or mother die intestate (*i.e.* without a will) she takes an equal share with her brothers and sisters of the personal property (*i.e.* goods, chattels, moveables, leases for years of houses or land, stock shares, &c.,) but her eldest brother, if she have one, and his children, even daughters, will take the *real* property (*i.e.*, not personal property, but all other, as freehold houses, and lands, &c.) as the heir-at-law, males and their issue being preferred to females; if, however, she have sisters only, then all the sisters take the real property equally. If she be an only child, and has no parent surviving, she is entitled to all the intestate real and personal property.

Few public employments.

The Church and nearly all offices under government are closed to women. The Post office affords some little employment to them; but there is no important office which they can practically hold, with the single exception of that of sovereign. The professions of law and medicine, whether or not closed by law, are in England closed in fact.* Women may engage in trade, and may occupy inferior situations, such as matron of a charity, sextoness of a church; and some parochial offices are open to them. Women are occasionally

* Miss Garrett did obtain the diploma of L.S.A., but it is now no longer given to women. Those who wish to enter the medical profession must go to Zurich or to Paris. The Medical School of the University of Paris is free to women. There are also many Medical Colleges for female students in America, which have charters from the legislature granting power to give degrees.

governors of prisons for women, overseers of the poor,* and parish clerks. A woman may be a ranger of a park.

A servant and a master or mistress are bound by a verbal or written agreement. Domestic servants.

There are no special laws for *female* servants. A master or mistress is not bound to give a character to a servant. But if a character is given it must be a true one to the best of the knowledge of the giver.

A servant may not leave her master or mistress on payment of a month's wages, but is liable to a fine if she does so, and to an action for compensation. But a master or mistress may send a servant away without giving notice, on paying a month's wages in addition to what is due down to the day of dismissal.

Any person guilty of certain fraudulent practices to procure the defilement of any woman or girl, under the age of twenty-one, commits a misdemeanor, and may be imprisoned with or without hard labour for a term not exceeding two years. Unless a promise of marriage has been made in writing, or overheard, a seduced woman has no remedy against her seducer. Seduction under false pretences.

Her father may maintain an action against the seducer, it being supposed that he stands in the Seduction.

* On Saturday Mrs. Sarah Wooster was appointed by the Aylesbury magistrates to the offices of overseer of the poor and surveyor of highways for the parish of Ilmore; and last year four women filled similar offices in the Aylesbury district. Among other places for which it has been held that women are eligible are those of high chamberlain, high constables, common constable, sexton, and returning officer at an election to Parliament.—*Pall Mall*, March 30th, 1868.

Rape.

place of a master, and sustains a loss of service in consequence of the pregnancy of his daughter.

There is no direct punishment for seduction, but the use of violence is visited with penal servitude for life, or not less than five years; or, with imprisonment for not exceeding two years, with or without hard labour. All persons aiding in the perpetration of rape are punishable by penal servitude or imprisonment.

Abduction.

If any person take away a girl under 16 years of age out of the possession of her natural guardians, he is liable to imprisonment for not more than two years.

Abduction of heiresses.

If a man, from motives of lucre, forcibly take away a woman, he and all who abet him are guilty of felony.

LAWS CONCERNING THE CHILDREN OF SINGLE WOMEN.

Such children belong to the mother.

Illegitimate children belong to the mother, and the father, even if avowed, cannot take possession of them. If a woman who is able to maintain her bastard child, fails to do so and it becomes chargeable to the parish, she may be punished as a rogue and a vagabond. (*See Appendix No. 2.*)

Maintenance by the reputed father.

If a woman can give corroborated testimony, to the satisfaction of the Justices at the Petty Sessions, that a certain man is father of her child, she can obtain from him ten shillings for the midwife, and ten shillings for the burial if the child is dead. If application be made by the mother before birth, or within two calendar months after birth, a sum, not exceeding five shillings per week, may be

obtained for the first six weeks. In other cases two shillings and sixpence is the largest sum the law can oblige the putative or reputed father to pay. If he fail to pay, his goods may be seized for payment, or if he have no goods he may be imprisoned for not more than three calendar months.

But if a woman allows more than thirteen weeks' payments to remain due, she can only claim thirteen weeks. The money is paid to the mother. When the child has attained the age of thirteen all payment ceases.

If a man marry a single woman having a child he is bound to support it, as if it were legitimate, till it attains the age of sixteen.

Marriage of a single woman—a mother.

LAWS CONCERNING WOMEN IN OTHER RELATIONSHIPS.

A single woman can act as agent for another person, and as an agent, legally execute delegated authority. A *wife* can so act if her husband do not dissent.

Agent.

An unmarried woman can be invested with a trust, but if she marry, the complexities and difficulties are great, from her inability to enter alone into deeds and assurances.*

Trustee.

A single woman can act as executrix under a will, but a wife cannot accept an executorship without her husband's consent.

Executrix.

A woman can hold the office of administratrix to an intestate personalty, that is to the personal property of a deceased person dying

Administra-
trix.

* Her husband's name must always be joined with hers, and his assent given to everything which she does as trustee.

without a will; and administration will be granted to her if she be next of kin to the intestate. But a wife cannot so act without the consent of her husband.

If a man place a woman in his house, and treat her as his wife, he is responsible for her debts to the same extent as if she were married to him.

RECENT LAWS IN WHICH WOMEN ARE SPECIALLY NAMED.

Women working in factories or establishments where 50 or more persons are employed.

All females are included in the restrictions of the Factory Act; that is to say, women of all ages, married or single, are forbidden to work above a certain number of hours, by the same Act which regulates the hours of work of children and young persons. This Factory Act is extended to rope works, lace factories, &c., &c., with many special provisions, some for the sending of children to school, &c. These are the most important provisions of this Act.

Factory Act extended to establishments employing less than 50.

No young person or woman shall be employed during any period of the four-and-twenty hours for more than twelve hours, and rest—amounting in the whole to not less than one hour and a half; and such employment shall take place only between the hours of five in the morning and nine at night. No such person (that is no woman or young person) shall be employed on Sunday, or after two o'clock on Saturday afternoon, except in cases where not more than five persons are employed in the same establishment, and where such employ-

ment consists in making articles to be sold by retail on the premises, or in repairing articles of a like nature.

In some counties of England, men, called gang-masters, hire a number of women and children, and contract to get a certain amount of work done for farmers. A law has been made regulating this description of labour; the following are two of the provisions regarding women:—

Women in agricultural gangs.

No females are to be employed in a gang with males. No female shall be employed in any gang under a male gang-master, unless a female, licensed to act as gang-master, is also present with that gang. Then follow the penalties.

LAWS CONCERNING MARRIED WOMEN.

Matrimony is a civil and indissoluble contract between a consenting man and woman of competent capacity.

Marriage.

These marriages are prohibited:—A widower with his deceased wife's sister; a widow with the brother of her deceased husband; a widower with his deceased wife's sister's daughter, for she is by affinity in the same degree as a niece to her uncle by consanguinity; a widower with a daughter of his deceased wife by a former husband; and a widower with his deceased wife's mother's sister. Consanguinity or affinity, where the children are illegitimate, is equally an impediment.

Prohibitions.

A lunatic or idiot cannot lawfully contract a marriage; but insanity after marriage does not invalidate a marriage.

A lunatic may contract a marriage during a lucid interval. Deaf and dumb persons may marry by signs.

It is a punishable offence for an infant (a person under twenty-one) to marry without the consent of the father or guardians. The consent of the mother is not necessary if there be a father, or unless she is the guardian.

Bigamy.

A second marriage, while a husband or wife is living, is absolutely void, and, except under certain circumstances, which raise a presumption of ignorance of the fact of the former husband or wife being alive, is felony, and punishable by imprisonment or penal servitude.

Breach of promise.

An agreement to marry made by a man and woman who do not come under any of these disabilities, is a contract of betrothment, and either party can bring an action, upon a refusal to complete the contract, in a superior court of Common Law.

Banns.

License.

Marriages may be celebrated as a secular form, or as a religious ceremony after the requisite public proclamations or banns, or by license.

Civilmarriage

The object of the Act* for authorising civil marriages, was to relieve Dissenters and those who could not conscientiously join in the formulary of the Church. Provision is made for necessary publicity, and the marriage can be legally contracted in a register office, or in the presence of the registrar in a place licensed for the purpose. Marriages in the Church of England (without banns or licence,) marriages of Quakers, Jews,

Superintendent registrar.

* 6th & 7th William IV. chap. 85.

Dissenters, and Roman Catholics, and marriages according to the civil or secular form, must be preceded by a given notice from one of the parties to the superintendent-registrar of the district.

The marriage law of Scotland is founded upon the Canon Law (i.e. Scotch marriages drawn from Scriptures and the writings of the Church.) In Scotland there are regular and irregular marriages. Irregular marriages are legal without any ceremony, and are of three sorts.

1. By a promise of marriage given in writing, or proved by a reference to the oath of the party, followed by consummation.

2. By the solemn mutual declaration of a man or woman, either verbally or in writing, expressing that the parties consent to take each other for husband and wife.

3. By notorious cohabitation as man and wife. In England, marriage of the parents does not legitimate children already born, but in Scotland it does. Persons living in England, and having illegitimate children, cannot by going to Scotland, there marrying and then returning, legitimatise their children in England. A domicile (or abiding home) in Scotland, and a marriage of the father and mother legitimatises the children in Scotland whenever born.

Lawful marriages in foreign countries are valid in England, save such marriages of persons domiciled in England as are forbidden by the law of England. Marriage with a deceased wife's sister is valid in England, if it has been celebrated in a country where such marriage is legal, provided the parties were at the time of the marriage domiciled there.*

Foreign marriages valid.

A man and wife are one person in law; the wife loses all her rights as a single woman, and her existence is, as it were absorbed in that of her husband. He is civilly responsible for her wrongful acts, and in some cases for her contracts; she lives under his protection or cover, and her condition is called coverture.

Married women no legal existence.

* This seems to be a question of domicile. A Mr. Brook married at Altona his first wife's sister, and the question was raised in 1857, whether that marriage, legal in Denmark, was legal in England. Mr. Justice Cresswell decided that as the parties were domiciled in England they were bound by the laws of England, and as those laws forbid the marriage with a deceased wife's sister the law of a foreign country cannot prevail.

A husband has a right to the person of his wife.

In theory, a married woman's body belongs to her husband; she is in his custody, and he can enforce his right by a writ of habeas corpus; but in practice this is greatly modified.

Exhibition of selling a wife is a misdemeanor.

The belief that a man can rid himself of his wife by going through the farce of a sale, and exhibiting his wife with a halter round her neck is a vulgar error. This disgusting exhibition, which has often been seen in our country, is a misdemeanor, and can be punished with fine and imprisonment.

Lending a wife is a misdemeanor.

The author of a recent publication asserts that a man may lend his wife; a man may not lend, let out, or sell his wife; such transactions are considered as being against public decency, and are misdemeanors.

Her personal property vests in her husband.

A wife's personal property before marriage, (such as stock, shares, money in hand, money at the bank, jewels, household goods, clothes, &c.) becomes absolutely her husband's, unless when settled in trust for her, and he may assign or dispose of it at his pleasure, whether he and his wife live together or not.

He takes her chattels real.

A wife's *chattels real* (*i. e.* estates held during a term of years, or the next presentation to a church living, &c.) become her husband's by his doing some act to appropriate them; but, if he does not and the wife survives, she resumes her property. Her *choses in action* (property which she can obtain by means of an action or suit) may be sued for and obtained by her husband; but if he fails to do so, they revert to her on his death.

Equity.

While the Common Law gives the whole of a

wife's personal property to her husband, the Courts of Equity, when he proceeds therein to recover property in right of his wife, oblige him to make a settlement of some portion of it upon her, if she be unprovided for and virtuous.

A husband is liable for the price of such goods as he allows his wife, as his agent, to order; she may have more power than any other agent, but her power is of the same kind; for if a wife orders goods without the knowledge of the husband, it is not at all certain that a legal decision will oblige him to pay for them; it mainly depends on what the jury thinks are domestic necessaries, or requisite for the position of the family.

A wife's debts

Neither the Courts of Common Law nor of Equity, have any direct power to oblige a man to support his wife. But the Divorce or Matrimonial Court, on granting a judicial separation (*see page 15*) may decree that the husband shall pay *alimony* to the wife for her support, and when a wife becomes chargeable to the parish, the magistrate may, upon application of the parish officers, direct the husband to pay for her maintenance.* A wife, whose husband without valid reason refuses to support her, may rent lodgings, take up goods, &c., suitable to her station, for which the creditors can compel the husband to pay.

Her right to support.

* When a married woman requires relief from her parish without her husband, the justices in petty sessions may summon such husband before them, and make him pay some sum weekly towards the cost of the relief of the wife.

For further particulars see "The Poor Law amendment Act, 1868," Notes and Index by Hugh Owen, Jun., Esq., Barrister-at-Law. London: Knight & Co., 90, Fleet Street.

Husband's power over his wife's real property.

A husband has the possession and usufruct of his wife's freehold property during the joint existence of himself and her; that is to say, he has absolute possession of them as long as they both live. If the wife dies without children, the property goes to her heir, but if she has borne a child capable of inheriting, her husband holds possession until his death, when it passes to her heir; but, on surviving her husband, her freeholds revert to her.

A married woman's earnings not her own but her husband's.

Money earned by a married woman belongs absolutely to her husband; that and all sources of income, excepting those mentioned above, are included in the term personal property. And her receipt for the earnings is not legal. The husband can claim the money notwithstanding such payment.

A wife's will.

By the express permission of her husband a wife can make a will of her personal property; for by such a permission he gives up his right. But he may revoke his leave at any time before *probate* (i.e., the exhibiting and proving a Will in Court.)

A mother's rights over children.

The legal custody of children belongs to the father. During the life time of a sane father, the mother has no rights over her children, except a limited power over young infants, and the father may take them from her and dispose of them as he thinks fit. If there be a legal separation of the parents, and there be neither agreement nor order of Court, giving the custody of the children to either parent, then the *right to the custody of the children*

(except for the nutriment of infants) belongs legally to the father.

A married woman cannot sue or be sued for contracts, nor can she enter into them except as the agent of her husband; that is to say, neither her word nor her deed is binding in law, and persons giving a wife credit have no remedy against her. There are some exceptions, as where she contracts debts upon estates settled to her separate use, or where a wife carries on trade separately, according to the custom of London, &c.

Responsibility of a wife.

A husband is liable for his wife's debts contracted before marriage, and also for her breaches of trust committed before marriage.

Responsibility of a husband for his wife's debts prior to marriage.

Neither a husband nor a wife can be witness against or for the other in criminal cases, not even after the death or divorce of either.

Witnesses.

A wife cannot bring actions unless the husband's name is joined.

Wife cannot bring actions.

As the wife is presumed to act under the command and control of her husband, she is excused from punishment for certain offences, such as theft, burglary, house-breaking, &c., if committed in his presence, unless it is proved that she did not act under his influence. A wife cannot be found guilty of concealing her felon husband, or of concealing a felon guilty with her husband. She cannot be convicted of stealing from her husband or of setting his house on fire, as they are one person in law. A husband and wife cannot be found guilty of a conspiracy to which they themselves only are parties, as that offence cannot be committed by one person.

A wife acts under coercion of her husband.

A married woman apprentice.

A married woman cannot be bound apprentice except by the permission of her husband, and he will, in the indenture, stand in the same position to her, as a father or guardian to an apprentice who is a minor.

USUAL PRECAUTION AGAINST THE LAWS CONCERNING THE PROPERTY OF MARRIED WOMEN.

An engaged woman cannot dispose of her property.

Where a woman has consented to a proposal of marriage she cannot dispose or give away her property without the knowledge of her betrothed; if she make any such disposition without his knowledge, even if he be ignorant of the existence of the property, the disposition will not be legal.

Settlements.

It is usual before marriage, in order to secure a wife and her children against the power of the husband, to make with his consent a settlement of some property on the wife, or to make an agreement before marriage that a settlement shall be made subsequently. It is in the power of the Court of Chancery to enforce the performance of such agreements.

Difference between Common Law and Equity.

Although the Common Law does not allow a married woman to possess any property, yet in respect of property settled for her separate use, equity endeavours to treat her as a single woman. She can acquire such property by contract before marriage with her husband, or by gift from him or other persons, and can, unless forbidden by the settlements, deal with it as she pleases.

There are great difficulties and complexities in making settlements, and they should always be drawn by a competent lawyer.

When a wife's property is stolen, the property (as it legally belongs to the husband) must be laid as his in the indictment. Indictment for theft.

SEPARATION AND DIVORCE.

A husband and wife can voluntarily separate upon a deed containing terms for their immediate separation, but they cannot legally agree to separate at a *future* time. Trustees must be parties to the deed which must provide what property the wife is to take. Voluntary separation.

The Divorce and Matrimonial Court decrees either a judicial separation or a divorce. Divorce and judicial separation.

Judicial separation may be decreed at the suit of the husband for adultery, or upon any of the grounds for which he might, if he be pleased, sue for a divorce. At the suit of the wife, it may be decreed for cruelty, adultery, &c., also for the grounds on which she might, if she pleased, sue for a divorce.

Divorce is an absolute dissolution of the marriage, after which the parties are free to re-marry. Divorce.

At the suit of the husband it may be decreed for adultery; and at the suit of the wife for adultery coupled with cruelty or desertion, and for certain aggravated cases of adultery.

A woman who has been deserted by her husband can obtain an order from the Divorce and Matrimonial Court, or from a magistrate, freeing her subsequent earnings and subsequently acquired property from the husband and his creditors. This protection to a wife is most valuable to working women. (See Appendix No. 3.) Desertion.
Deserted wife may receive her own earnings.

Judicial separation.

Upon a judicial separation all the property subsequently acquired by the wife, becomes her own, and devolves after her death as if she were single. She is considered to be a single woman for purposes of contract, bringing actions; and her husband is not liable for what she does. If she and her husband live together again (which they may do if they please) the property belonging to her at the commencement of re-cohabitation is considered as settled to her separate use, but in other respects the separation comes to an end. Judicial separation does not enable the parties to marry again.

LAWS CONCERNING A WIDOW.

Her property. A widow recovers her real property, but if there be a settlement she is restricted by its provisions. She recovers her chattels real, if her husband has not disposed of them by will or otherwise.

A wife's paraphernalia. A wife's paraphernalia (*i. e.* her clothes and ornaments) which her husband owns during her life-time, and which his creditors can seize for his debts, becomes her property on his death.

Her liabilities. A widow is liable for any debts which she contracted before marriage, and which have been left unpaid during her marriage.

The widow is not bound to bury her dead husband, that being the duty of his legal representative.

A widow's one-third. If a man die intestate, his widow, if there are children, is entitled to one-third of the personalty; if there are no children, to one half; the other is distributed among the next of kin of the husband, among whom the widow is not counted. If

there is no next of kin, the moiety goes to the Crown.

A husband can, by will, deprive a wife of all right in his personalty.

A right is granted in Magna Charta to a widow to remain forty days in her husband's house after his death, provided she do not marry during that time.

A widow, married before the passing of the Dower Act, has by law *dower* of her husband's freehold lands, which is a right to the possession of a third of them during her life, and *free-bench* of a portion of his copyholds, but these rights are generally taken away by settlements or conveyances. If she accept a jointure she has no claim to dower. A widow, who was married since the Dower Act, has dower only of her freeholds, &c., which her husband possessed at his death, and died intestate of; but unlike the widow married before the passing of the Dower Act, she has also dower of equitable estates. (*See Appendix No. 4.*)

Quarantine.

Dower.

REMARKS.

Having put in a few pages, before our readers, the Laws of England concerning women, I will proceed to consider what are the legal grievances removable by legislation.

In my opinion, the most important of all these, is the fact that women "have no voice, and no influence recognised by the law, in the election of the representatives of the people, while they are otherwise acknowledged as responsible citizens, are eligible for many public offices, and required to pay all taxes. It is not as a means of extorting justice from unwilling legislators that the franchise is claimed for women. In so far as the claim is made with any special reference to class interests at all, it is simply on the general ground, that under a representative government, any class which is not represented is likely to be neglected. Proverbially, what is out of sight is out of mind; and the theory that women, as such, are bound to keep out of sight, finds its most emphatic expression in the denial of the right to vote. The direct results are probably less injurious than those which are indirect; but that a want of due consideration for the interests of women is apparent in our legislation, could very easily be shown. To give evidence in detail would be a long and an invidious task. I will mention one instance only, that of the educational endowments all over the country. Very few people would now maintain that the education of boys is more important to the State than that of girls. But as a matter of fact, girls have but a very small share in

educational endowments. Many of the old foundations have been reformed by Parliament, but the desirableness of providing with equal care for girls and boys has very seldom been recognised. In the administration of charities generally, the same tendency prevails to postpone the claims of women to those of men.

"Among instances of hardship traceable directly to exclusion from the franchise and to no other cause, may be mentioned the unwillingness of landlords to accept women as tenants.

"The very fact that, though householders and taxpayers, they have not equal privileges with male householders and taxpayers, casts a kind of slur on the value of their opinions; and I may remark in passing, that what is treated as of no value is apt to grow valueless. Citizenship is an honour, and not to have the full rights of a citizen is a want of honour. Obvious it may not be, but by a subtle and sure process, those who without their own consent and without sufficient reason are debarred from full participation in the rights and duties of a citizen, lose more or less of social consideration and esteem. And among all the reasons for giving women votes, the one which appears to me the strongest, is that of the influence it might be expected to have in increasing public spirit. Patriotism, a healthy, lively, intelligent interest in everything which concerns the nation to which we belong, and an unselfish devotedness to the public service,—these are the qualities which make a people great and happy; these are the virtues which ought to be most sedulously cultivated in all classes of the community. And I know no better means, at this present time, of counteracting the tendency to prefer narrow private ends to the public good, than this of giving to all women, duly qualified, a direct and conscious participation in political affairs. Give some women votes, and it will tend to make all women think

seriously of the concerns of the nation at large, and their interest having once been fairly roused, they will take pains, by reading and by consultation with persons better informed than themselves, to form sound opinions. As it is, women of the middle class occupy themselves but little with anything beyond their own family circle. They do not consider it any concern of theirs, if poor men and women are ill-nursed in workhouse infirmaries, and poor children ill-taught in workhouse schools. If the roads are bad, the drains neglected, the water poisoned, they think it is all very wrong, but it does not occur to them that it is their duty to get it put right, they think it is men's business, not theirs, to look after such things. It is this belief—so narrowing and deadening in its influence—that the exercise of the franchise would tend to dissipate. The mere fact of being called upon to enforce an opinion by a vote, would have an immediate effect in awakening a healthy sense of responsibility. There is no reason why these women should not take an active interest in all the social questions—education, public health, prison discipline, the poor laws, and the rest—which occupy Parliament, and by bringing women into hearty co-operation with men, we gain the benefit not only of their work, but of their intelligent sympathy. Public spirit is like fire: a feeble spark of it may be fanned into a flame, or it may very easily be put out. And the result of teaching women that they have nothing to do with politics, is that their influence goes towards extinguishing the unselfish interest—never too strong—which men are disposed to take in public affairs.

“An assertion often made, that women would lose the good influence which they now exert indirectly on public affairs if they had votes, seems to require proof. First of all, it is necessary to prove that women have this indirect influence,—then that it is good,—then that the

indirect good influence would be lost if they had direct influence,—then that the indirect influence which they would lose is better than the direct influence they would gain. From my own observation I should say, that the women who have gained by their wisdom and earnestness a good indirect influence, would not lose that influence if they had votes. And I see no necessary connexion between goodness and indirectness. On the contrary, I believe that the great thing women want is to be more direct and straightforward in thought, word, and deed. I think the educational advantage of citizenship to women would be so great, that I feel inclined to run the risk of sacrificing the subtle indirect influence, to a wholesome feeling of responsibility, which would, I think, make women give their opinions less rashly and more conscientiously than at present on political subjects.”*

It is also a hardship which the law might remedy, that women when married have no property in their own hands, and no right to the wages they earn.

A woman of twenty-one becomes an independent human creature, capable of holding and administering property to any amount; or, if she can earn money, she may appropriate her earnings freely to any purpose she thinks good. Her father has no power over her or her property. But if she unites herself to a man, the law immediately steps in, and she finds herself legislated for, and her condition of life suddenly and entirely changed. Whatever age she may be of, she is again considered as an infant—she is again under “*reasonable restraint*”—she loses her separate existence, and is merged in that of her husband.

Of all the strange injustice done in our day, and de-

* The above are extracts from a pamphlet entitled “Reasons for and against Enfranchisement of Women,” by Mrs. Bodichon. Printed by Spottiswoode & Co., New Street Square, and distributed (gratuitously), by the London National Society for Women's Suffrage.

fended as unjust, none is so certain to be soon thought an obsolete barbarism as the law concerning the property of married women. That the rich have a means of escape, and the poor have none, is in itself its condemnation.

It is not for us to say that Mr. Shaw Lefevre's bill was quite perfect as it stood, or that a better could not be proposed; we may have a very feeling knowledge of where the shoe pinches, without being shoe makers. It is for women to say they are hurt by the present law, and for law reformers to amend it. The effect of the bill Mr. Shaw Lefevre proposed, was to do away with the rule of common law, and to put married women, as regards their own property, in much the same position as they were in before marriage. A wife might give her property to her husband, but it was not given by the law. Parents might make settlements, and it is right they should do so in many cases, where the wife is young and utterly inexperienced.

At first sight it might seem that the bill was one sided, in obliging the husband to support his wife and children when she has money of her own to contribute to the household expenses; but it is not really unfair. The reason why a man ought in justice to support his wife, is not founded in any consideration of her possession of property or not: it is because marriage in itself forces usually on the woman a large share of work—in-door work, which sets a man free for paying work outside his household. But in truth, the present English law gives a most insufficient guarantee to the wife of any support, while it positively gives all the wife has, and all she may ever earn or inherit, to the husband.*

* The Committee appointed last year to consider Mr. Shaw Lefevre's bill, published a long and favourable report upon it, and the subject was again brought before the House this session, on February 25th, by Mr. Russell Gurney, upon whom the care of Mr. Shaw Lefevre's measure has devolved.

We think a man is bound to support his wife and children, and we are certain that as far as leaving the wife free to spend her money, will affect the family, it will be assured greatly for the benefit of the children. A man is certainly more likely to spend a fortune away from home, than a woman. We cannot do better than quote from a most excellent article in the *Woman's World*:—

“The mere statement of what the law is, might almost seem to supply sufficient reason why it should be altered. It is on the face of it unjust to deprive a woman, for no fault committed, of all the rights, the enjoyments, and the duties of property. It is absurd to suppose that the wife and mother has less interest in the well-being of her household than the husband and father, or that the cause of domestic morality will be more injured by the chance which the abrogation of the rule of the Common Law might give to a vicious woman of running away from her husband with her own earnings, than by the power which that rule now gives to a vicious man of running away from his wife with her earnings as well as his own.

“We have shown that the practice of the Court of Chancery and the practice of the best educated classes alike condemn the present law. But what is this but to say, in other words, that it is condemned by the highest practical morality of the day. The best educated men and women show, by their constant practice, that they believe the law to be both unjust and inexpedient. *The real reason why such a law has not long since been abrogated, is to be found in the fact that the law-making classes have so long been making a private law unto themselves.* They have seen little of the bitterest fruits of the law's injustice: those who do see it are, for the most part, persons whose voice on legal matters is little heeded—the busy workers amongst the poor. But another, and more creditable reason, is to be found in the fact, that the great majority of thoughtful Englishmen are so much better than the law: it does not occur to them to oppress or rob their wives, and so they forget the case of those to whom the law is almost the only schoolmaster of morals.”

There is a curious old Saxon custom remaining still in the city of London which permits a married woman to trade on her own account if her husband give his assent. She is called a *feme sole* trader, and can contract, and has all the powers of a single woman in this respect. There are many women carrying on trade in this way in the city, and there are no inconveniences arising.

In France it is common for married women to trade. The laws of France concerning married women are rather

complicated, (we give them in Appendix No. V.) but on the whole are good, and French women have less reason to complain, and do not complain as English women universally do, of the injustice of the law.

If we compare our laws with the laws of France, Spain, Austria, or the old laws of Hungary, with the laws of Prussia or the United States of America, we shall see that we in England are far behind in justice. In all of those countries women have more nearly equal rights with men than in England. The most nearly approaching justice to married women are the laws of the State of New York, which we give in our Appendix (No. VI.)

As we look down the ages, we see all forms of coercion of the weak by the strong upheld as useful and beneficent. Women, as physically weaker, have suffered most in the struggle for existence, of man against nature and man against man; they have been disposed of by the stronger sex without much regard to justice or moral law. There have been two ways generally of treating women in rude ages (with but few exceptions); they were either slaves or treated as children. It is not our intention to give here even the briefest sketch of the history of the laws men have made concerning women in past ages; but we cannot resist alluding to ancient Roman law, as it has special interest for us at the present time. In the most ancient times of Roman history, women were always considered as children, and always under guardianship in *perpetual tutelage*, as it was called.

This barbarous custom was brought into Europe by the great invaders of the East. These laws, very little mitigated, exist in most Scandinavian countries to this day. In Sweden a brother is guardian of his sister, even if he be many years younger, and she cannot marry without his consent; in fact, a woman is always under the guardianship of the male head of the house. The Hindoos

have this law in its oldest and most savage form, still existing. A woman is always the ward of one of her male relations, and it is not uncommon to see a mother the ward of her own son.

“But from the mature Roman jurisprudence it had entirely disappeared. We should know almost nothing about it if we had only the compilations of Justinian to consult; but the discovery of the manuscript of Gaius discloses it to us at a most interesting epoch, just when it had fallen into complete discredit, and was verging on extinction. The great juriconsult himself scouts the popular apology offered for it in the mental inferiority of the female sex, and a considerable part of his volume is taken up with descriptions of the numerous expedients, some of them displaying extraordinary ingenuity, which the Roman lawyers had devised for enabling women to defeat the ancient rules. Led by their theory of natural law, the juriconsults had evidently at this time assumed the equality of the sexes as a principle of their code of equity. The restrictions which they attacked were, it is to be observed, restrictions on the disposition of property, for which the assent of the woman’s guardians were still formally required. Control of her person was apparently quite obsolete.”*

While reading this passage, our own cumberous arrangements to avoid an unjust law will instantly occur to us—I mean the subterfuge of settlements, by which rich women, when they marry, can escape the law which gives over all a woman’s property, being or to be, to the man she marries.

When the Indian Law Commission, on which were Lord Romilly, Sir W. Erle, Mr. Justice Willes, Sir Edward Ryan, and Mr. Lowe, framed a code for India, which was to apply to all classes, subject to special customs of certain sects,

* Ancient Law : its Connection with Early History of Society, and its Relation to Modern Ideas. By Henry Sumner Maine.

they gave to married women their separate property, and a right to contract; rejecting entirely the rule of the common law. This is interesting to us, as giving us the opinion of the men who formed the commission, for they were considered the ablest men in the country, and it is a most weighty argument on our side, that these men have proposed such provisions concerning married women for our great Indian empire. (*See Appendix No. 7.*)

No thinking person will affirm that human institutions are perfect for all time, or that any set of rules made by man may not, nay, must not, as years move on, be capable of being made better, that is, more fitting. Yet we constantly see long existing laws and customs defended simply because they are existing, as if the very fact of being, proved them all heaven-born.

Now it is a fact, that good laws become bad laws by changes of circumstances, and that the age of a law or custom is more likely to be an argument of unfitness than of fitness.

Respect of the law, as something like revelation, is very general in England; women especially, have a vague feeling that the law is often cruel, no doubt, but that it is in some mysterious way right, and certainly unchangeable. It is a pity that this superstition should not be destroyed by a little knowledge of the laws of other countries, and the changes in some of our own laws within a few years.

Take, for instance, the laws concerning debtors and creditors, which have been altered within our memory—are they now quite perfect? They have been much improved lately, and may be changed for the better again to-morrow. I take this instance of laws which have been altered and improved within our experience, because we have nearly all of us at some time suffered by the old laws and gained by the new. Or if we individually have not, it does not require much sympathy for others, or much imagination,

to feel and see, how much we gain or lose by the justice or injustice of these particular laws. Perhaps their cheap, easy, and quick application, has done more towards saving temper, health, and time, than any other modern improvement. For what can be more irritating than to find it an expensive, slow, and complicated operation, to get from a dishonest man what he owes you?

County Courts, before 1846, were dilatory and expensive; there were, in fact, very few Courts at all where a debt of £2. could be recovered.

Let us put ourselves back in thought a few years, and bring before our minds how many poor families must have been ruined by their inability to recover easily a few weeks' wages; how much utterly useless suffering must have been inflicted on the working classes especially by the imperfection of these laws. The rich did not feel them; if they had felt them only half as cruelly as the poor, they would long before have been changed. The rich recovered their large debts or seized goods, but small sums, which were large debts to the poor, and of much more vital importance (for forty shillings is often a matter of life or death to a poor man), could not be claimed without great trouble and great waste of time and money. "The laws are made for the rich and not for the poor," is a phrase for ever in the mouths of the labouring class, and certainly it has had far too much truth. The working classes have felt, and do feel, that the laws have not been perfect, and are still capable of improvement.

The laws about "the taking away" of female children would not appear to me perfect if I were a poor man and a father; for, remark, the man who "takes away" my daughter not sixteen years of age, cannot be imprisoned for more than two years, and he may "take her away" from my house if she be sixteen, and go quite free; but if I am the father of an heiress, any man who takes her

away before she is twenty-one years of age, is guilty of felony.

The rich men of England do not very often feel themselves aggrieved by an irritating injustice in the laws; so what is *legal* is generally felt to be *right*. For instance, in a household, the master or mistress may say, in a patient, pitying way, that it is a shame that the poor housemaid, who has got into a very bad family, cannot leave immediately by paying her employer a month's wages; but they do not feel it so acutely as a wrong, as they would do, if they could not get rid of their very bad servant by paying her a month's wages. It was the men representing and related to the mistress who made this law, and not the men representing and related to the maid.

A little child once discovered that "to-day is the to-morrow of yesterday." Those who would stand still must remember we cannot stop time, we cannot rest here; there can be no living society that does not grow or decay, and it is for us to see that the changes are healthy growth.

APPENDIX I.

"Lord Romilly's Act, and the meaning exactly of the word 'man,' has lately had an ephemeral interest. I allude to the decision about 'man' as to the right of women to vote under the new Reform Bill. I think a little straightforward common sense would have prevented the cases from being tried at all, as it was evidently not the intention of the Legislature to give votes to women.

The first rule in the construction of statutes is, that the Court is bound to give effect to the intentions of Parlia-

ment, so far as those intentions can be ascertained from the Act itself. The Court must not go into extraneous matter, as speeches made when the Bill was in Parliament, &c.

"Now' the use of the word 'man' is conclusive. If Parliament had meant to include women it would have used the word 'person,' the word ordinarily used in Acts.

"Neither in law nor in common parlance is 'man' (meaning an individual) ever used to include woman. Romilly's Act was passed for the purpose of avoiding the necessity of saying 'he, she, or they,' 'his, her, or their,' 'horse or mare,' &c., &c. The immediate cause of its passing was this:—The late Duke of Buckingham had summoned some persons for poaching at Stowe, and had them fined. They, in revenge, summoned the Duchess (who had been pheasant shooting) for shooting game without a license. The magistrates decided that as the Act said person, and used the pronoun 'he' only, it did not include women, and dismissed the summons. Romilly's Act provides that words importing the singular number, masculine gender, shall include the plural number and feminine gender, save when a contrary intention is clearly expressed. Now the Court held (and I think clearly rightly) that the use of 'man' amounted to such an expression of intention.

"Person,' followed by 'he,' would include woman, unless a contrary intention expressed; but 'man' would not include woman."

APPENDIX II.

The hideous mortality of infants among the poor, especially the infants of women who are not married, is one of the most startling facts of our day. We will not go

into figures, for hardly a weekly newspaper can be read which does not contain these details.

I wish here to print the remarks of a lady of great wisdom, experience, and benevolence, on a collection of sad cases which she brought together. All of us will have probably such cases in our experience, and I think the justice and sense of her remarks makes them worthy of our consideration.

“Those whose concern at these crimes shall induce them to glance over this sad record of guilt and misery will be surprised to see, among all the varying and distressing circumstances under which this crime has been committed, that one fact will ever be found the same; namely, that in no instance does it appear that the father had in any way contributed to the support of his child; whilst in no less than four cases out of eight, all assistance had been positively refused!

“It appears that the original cause of the cases of infanticide, here republished, and also of the many others which daily appear, is the desertion of the child by the father. Could means be found to restrain the practice of throwing the maintenance of the child on the mother, many lives would be saved, for it is not reasonable to suppose that a poor girl, as often happens, who has not the means of obtaining a private lodging and medical assistance for herself, should be able to maintain her child. The law appears to me very inefficient in this case; for though theoretically it is the father's duty to provide for his offspring, he is not compelled to do so by the fear of any penalty in case of its death. It is this omission which throws such a heavy burden on the mother, whose loss of reputation has also made it very difficult for her to maintain herself, and renders it quite impossible to support the child. If the child under these circumstances becomes chargeable to the parish, the father may be prosecuted, and ordered to pay a sum seldom exceeding eighteen pence a week for its maintenance. But as the mother cannot leave her place in order to prosecute the man, it is often neglected, and in many cases the mother finds herself reduced to the workhouse till the child is old enough to maintain itself. Thus, in case of a child surviving, the mother is often imprisoned for a period of ten or twelve years, while, if it perishes, a far shorter period of imprisonment will probably be her lot. This must place her under a strong temptation to let it die.

“With respect to the father, if the child perishes, he is at once relieved from all expense and trouble; nor though its death should be the immediate consequence of his neglect, can any penalty attach to him—a mob may duck him, but even then the police will take care he suffers no great harm.

“Should the child live, he may be made to pay as much as half-a-crown

a week for its maintenance,—a sum which amounts in thirteen years to upwards of £84. Thus, through the inadvertence of legislators, the father has a direct interest in its death,—a state of things which never could have been intended, and which is quite sufficient in itself to account for the regular increase of this crime; but if its death from neglect entailed punishment on himself, this interest would be counterbalanced, and three good results would follow:—fewer girls would be seduced; fewer children murdered; and poor rates would be greatly lightened.

“The remedies I would propose are, first, to restore to parish officers the power formerly enjoyed by them of prosecuting the father, and they should be encouraged to do so by being enabled to recover five or ten pounds for the expenses of the woman during her confinement. Parishes should be bound to prosecute in all such cases.

“Secondly, that, in cases of infanticide, the father should always be treated as accessory to the fact, when it is proved that he had not provided for the woman's confinement, and paid regularly eighteen pence a week at least, during that time.”

We think it might be possible to adopt such measures in the country, but in large towns the difficulty would be great. Still, some modification of these suggestions, which certainly strike at the root of the matter, might be adopted.

APPENDIX III.

“PROTECTION ORDER.

“TO BE OBTAINED BY A WIFE TO PROTECT HER PROPERTY AGAINST
HER HUSBAND.

“Every wife deserted by her husband, may, at any time after such desertion, apply to the Judge Ordinary of the Divorce Court, or to a Police Magistrate, or to justices in Petty Sessions, for an order to protect any money or property in England, she may have acquired, or may acquire by her own lawful industry; and also to protect any property she may have become possessed of, or may become possessed of, after such desertion, against her husband or his creditors, or any person claiming under him. And

such order shall extend, if required, to property to which any such wife has become, or may become entitled as executrix, administratrix, or trustee, since the sentence of separation, or the commencement of the desertion "as the case may be," and the death of the testator or intestate shall be deemed to be the time when such wife became entitled, as executrix or administratrix.

TO PROTECT A WIFE'S EARNINGS.

"The Judge Ordinary of the Divorce Court, or a Police Magistrate, or Justices in Petty Sessions, may, if satisfied of the desertion of the wife by her husband, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, make and give to the wife an order, protecting her earnings and property, acquired since the commencement of such desertion, from her husband, and all creditors and persons claiming under him; and such earnings and property shall belong to the wife as if she were a *feme sole*.—*The Laws of Marriage, and the Laws of Divorce of England, in the form of a code. Arranged by Alfred Waddilove, D.C.L.*

"Desertion is absence without cause for two years and upwards. In the case of Susannah Palmer, which was one of unusual hardship, the magistrate applied to could not give her an order to receive her own earnings, because the husband had not legally deserted his wife. He returned to kick her, knock her teeth down her throat, and commit every horrible outrage on her and her children, robbing her, and turning her into the streets. Yet this was not legal desertion, and she was refused the order, the law not giving the magistrate power to relieve this poor victim from her tormentor."

APPENDIX IV.

TO DOWER.

The law was altered by the Dower Act, passed some thirty years ago. Under the old law, a widow had dower of all land of which her husband had had a legal estate of inheritance at any time during the coverture (notwithstanding that he had sold the land or devised it by will, &c.), unless she was a party to the conveyance, and had executed it in presence of a lord mayor, judge, or commissioner, who examined her in private, her husband not being present, to satisfy himself that she acted of her own free will. This was, however, very inconvenient, as it threw obstacles in the way of the transfer of land, and complicated titles. Consequently, very long ago, conveyancers devised a mode of preventing dower from attaching to land. As I have said, dower attached on lands of which the husband had a *legal estate in inheritance*; so conveyances, settlements, and wills, were so drawn that they did not give a legal estate of inheritance, though they gave practically the same thing; and thus dower did not attach to the land, and the widow did not get it. It was only in the exceptional cases, where land had not been so conveyed, that a widow ever got dower.

The Dower Act applies only to persons married after its passing. Under it a widow has dower only of estates of which her husband died possessed, and which he did not leave by will; thus doing by simple law what had been previously done by complex conveyancing; but the Act gives the widow dower of equitable estates, which the old law does not. On the whole, it is better for the widow than the old law, and greatly simplifies conveyancing and titles.

Inasmuch, however, as the Dower Act does not affect

the lands of persons married before its passing, conveyancers still continued (and often do still) to convey land in the old way, even when the grantee was not married before the passing of the Act; so that in any future dealing with the title, it shall not be necessary to prove that he was not so married. However, as the possibility of a grantee's being married before the Act comes to an end, this practice will cease.

"It may be observed that the injustice done to a wife by the common law is rather the result of altered social circumstances than of the original intention of the law. In the times when the common law had its origin, the bulk of private property was in land, the amount of personalty, except among merchants, being probably very small. There can be little doubt that, as a rule, the only personal property possessed by a woman on her marriage in medieval times would be her jewels, or a little furniture. Now, with regard to land, the law was comparatively fair to the wife. If she possessed land, her husband had the management of it during the coverture, and if living issue was born of the marriage, he had a life-interest in case he survived her. But he could not alienate the property without her consent, and the land, in absence of such consent, went sooner or later to her heirs. On the other hand, the wife, whether possessed of property or not, was (in case of survivorship) entitled to her dower, that is, to a life-interest in one-third of every acre which her husband had held in fee simple at any time during the coverture; and if he alienated the land, he could do so only subject to this charge. It is unnecessary to point out how this ancient provision for the wife has been frittered away; but the growth of personal property in the country, constituting, as it has long done, the bulk of the national wealth, rendered the rules of the common law inapplicable to the needs of society. If, under all circumstances, and without redress,

the fortune of every woman had become on her marriage the absolute property of the husband, the influential classes would have long ago insisted on a legislative remedy. It was the interference of the Court of Chancery, securing to a wife her separate interest, which has practically defeated, in the case of the upper classes, the operation of the common law, and so caused its true nature to be practically disregarded."—*The Laws relating to the Property of Married Women.*

APPENDIX V.

We quote from the admirable report of the Law Amendment Society:—

"1. *Regime de Communauté* is either *légale* or *contractuelle*. By the first, which is by operation of law without any contract, all the *moveable* property of the man and woman, both at marriage or acquired during marriage (except specific legacies specially tied up), and the *immoveable* property acquired during marriage, form one mass called *communauté*, which is administered by the husband, and may be alienated by him during marriage, but cannot be bequeathed except as to his share; and at the dissolution of the marriage, a partition takes place between husband and wife or their representatives.

"The wife's *immoveable* property belongs to the wife alone, but the rents, and profits, and administration go to the husband.

"The *communauté*, and therefore the husband, is answerable for all the debts (except those belonging to the real estate) of the wife, both before marriage, or contracted during the marriage. The wife can obtain a *séparation des biens*, that is, a division of the *moveable*

property, and have the administration of her share committed to her, on application to a Court of Justice, if the husband is making away with the property.

“By the *communauté conventionnelle*, any provisions modifying the community of law may be introduced in the antenuptial marriage contract. The usual modification is to give the wife a lesser share than half, according to the amount of moveable property she brings into the common stock.

“2. *Regime dotal*. Under this system the dowry is the sum brought to the husband to sustain the charges of the marriage, and is specified in the antenuptial contract. But the contract, like English marriage settlements, may introduce any provisions whatever.

“In Turkey, daughters succeed equally with sons in houses and landed property, and always take one-third of the personal property. A widow receives one-eighth of the personal property, and must be provided for during her life by the heirs. Women control their own inheritance when married; the husband has no power over the inherited portion of his wife or wives.

“In Hungary, the common law, before 1849 (the German law is now introduced), made a broad distinction between *inherited* and *acquired* property, whether landed or personal. Whatever was inherited went to the heirs; it could not be subject to a will.

As to *acquired* property, the law only interfered to give half to the wife; it was her absolute property, of which she might dispose in any way during life or by will. Among the nobility this law did not obtain. In cases where inherited property had been so left by the will of the first *acquirer* as to exclude the female sex, the brothers were obliged to give a handsome sum if they married to their sisters, and provide for them in a becoming way if they remained single.

“The rights of a widow were great; she was guardian of children, administratrix of property, and, as long as she bore the name of her husband, she could exercise all the political rights of a man; she could vote in elections of county officers, and in those of the Deputies to the Diet.

“Single females, according to the Hungarian law, were considered as minors, who became of age upon marriage, and by marriage came into full control of all their estates. They were not liable for the debts of their husbands; they were not even bound to provide for the domestic expenses, the care of providing for the house and the education of the children being incumbent on the husband. Wives could make wills and sign deeds without the consent of the husbands. If a wife died intestate, her property went to her children or collaterals.”

APPENDIX VI.

CIVIL CODE OF THE STATE OF NEW YORK.

(*Husband and Wife*.)

Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

The husband is the head of the family; He may choose any reasonable place or mode of living, and the wife must conform thereto.

The husband must support himself and wife out of his property or by his labour. If he is unable to do so, she must assist him so far as she is able.

Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property which either might, if unmarried, subject in transactions between themselves to the general

rules which control the actions of persons occupying confidential relations with each other, as defined by the Title on Trusts.

A husband and wife cannot, by a contract with each other, alter their legal relation, except that they may agree to an immediate separation, and may make provision for the support of either of them, and of their children during such separation.

The mutual consent of the parties was a sufficient consideration for such an agreement as is mentioned in the last section. A special consideration is now necessary to support such an agreement.

A husband and wife may hold real or personal property together, jointly or in common.

Neither husband nor wife, as such, is answerable for the acts of the other. This provision is new, but manifestly just under the present state of the law.

If the husband neglects* to make adequate provision for the support of his wife, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

If the wife abandons the husband, he is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him.

APPENDIX VII.

ACT No. X. OF 1865.

An Act to amend the Laws of Intestate and Testamentary succession in British India.

* If the husband and wife separate by consent, and the husband, by agreement, secures to her a separate maintenance suitable to their circumstances, he is not liable for anything furnished to her so long as he performs such agreement.

THE REV. F. D. MAURICE ON FEMALE SUFFRAGE.

[FROM THE "SPECTATOR" OF MARCH 5, 1870.]

SIR,—The question of Female Suffrage will shortly come before Parliament. The advocates of it assert the right of women to share in the government of a country of which they constitute so large a portion. The opponents of it maintain that the influence which women exercise in England is and should be domestic, not political.

I leave the first argument untouched; on the second I would wish to say a few words. Can any one pretend that the influence of women over politics—over electioneering politics especially—is not very considerable now? Suppose it is only domestic influence; that continually determines what candidates shall offer themselves, not unfrequently what candidate shall be elected. But notoriously, this purely "domestic" power is exerted, dangerously exerted, on tenants, on shopkeepers, on all classes that form our constituencies. According to the maxims that are generally accepted by thoughtful men, is it not well that this (strictly political) power should be held under a sense of responsibility, with the acknowledgment of it as a trust, not wielded carelessly to gratify some sentiment, to sustain some personal favourite? Those who demand the suffrage for women are not really asking for them a power which they do not possess; they are asking a security that the power which they do possess may be used seriously, with a deliberate conviction, with a dread of sacrificing general interests to private partialities.

By withholding the suffrage from women on the ground that they ought not to be politicians, we make them, it seems to me, politicians of the worst kind. We justify all feminine pleas for acting upon mere trust or fancy in the selection of a candidate; we encourage the abuses to which those pleas lead. On the other hand, if the Legislature frankly admits women to the exercise of the suffrage, it will, I believe, gradually raise the tone of the whole land, by raising the tone of those who, often to their injury, govern its governors. In any sphere wherein women feel their responsibility they are, as a rule, far more conscientious than men. When in any sphere they are *less* conscientious and help to make men less conscientious, it is a reasonable conjecture that in this sphere something has taken from them the sense of responsibility. Mere legislation is not able to effect such a mischief as that, but legislation based upon a moral theory and working along with it may do even greater mischief.

I would contend as earnestly as anyone for the domestic duties of a woman. I

question whether you do not cripple her in the performance of these duties, and lower her conception of their grandeur, when you teach her not to regard herself as a citizen. The sanctity of the home is the safeguard of the nation; if you decree a separation between the home and the nation, if you affirm that one-half of the nation is to be shut up in the home and excluded from any participation in large interests, take care that the ornaments of the home do not become mere ornaments; pictures to be gazed at and worshipped, not living powers to purify and hallow. I should like to see our Legislature proving by their acts that this is not their conception of a woman's function in the world; all the compliments which they pay her are very hollow and contemptible, if it is.

So long as a majority of the male inhabitants of Great Britain were not reckoned in the constituency, it might have been a useless waste of time to recommend that women should be represented. When householders are admitted to the franchise, their exclusion must strike any one as anomalous. I do not, however, ask for their admission as the removal of a constitutional anomaly, of which we tolerate so many, but as a positive strength to the moral life of England. The hints I have thrown out on this subject have been expanded with far more force in the writings wherein women have pleaded their own cause. But it may not be wholly useless for an outsider of the other sex to own how their arguments have impressed him, and to state on what grounds he considers that men of all parties and all professions may co-operate with them.—I am, Sir, &c.,

Cambridge, March 1.

F. D. MAURICE.

PART I.—PRELIMINARY.

Section 4.—No person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property that he or she could have done if unmarried.

PART II.—OF DOMICILE.

Section 15.—By marriage a woman acquires the Domicile of her husband, if she had not the same Domicile before.

16.—The wife's Domicile during the marriage follows the Domicile of her husband.

PART VI.—OF THE EFFECT OF MARRIAGE AND MARRIAGE SETTLEMENT ON PROPERTY.

Section 43.—The husband surviving his wife has the same rights in respect of her property if she die intestate, as the widow has in respect of her husband's property if he die intestate.

44.—If a person whose domicile is not in British India, marries in British India a person whose domicile is in British India, neither party acquires by the marriage any rights in respect of any property of the other party, not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in British India at the time of the marriage.

PART XLI.—MISCELLANEOUS.

Section 331.—The provisions of this Act shall not apply to Intestate or Testamentary succession to the property of any Hindée, Muhammadan, or Buddhist; nor shall they apply to any will made, or any intestacy occurring before the first day of January, 1866. The fourth section shall not apply to any marriage contracted before the same day.

CRIMINALS, IDIOTS, WOMEN, AND MINORS.

IS THE CLASSIFICATION SOUND?

A DISCUSSION

ON

THE LAWS CONCERNING THE PROPERTY OF MARRIED WOMEN.

BY

FRANCES POWER COBBE.

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CRIMINALS, IDIOTS, WOMEN, AND MINORS.

THERE was an allegory rather popular about thirty years ago, whose manifest purpose was to impress on the juvenile mind that tendency which Mr. Matthew Arnold has ingeniously designated "Hebraism." The hero of the tale descends upon earth from some distant planet, and is conducted by a mundane cicerone through one of our great cities, where he beholds the docks and arsenals, the streets and marts, the galleries of art, and the palaces of royalty. The visitor admires everything till he happens to pass a grave-yard. "What is that gloomy spot?" he asks of his companion.

"It is a cemetery," replies the guide.

"A—what did you say?" inquires the son of the star.

"A grave-yard; a place of public interment; where we bury our dead," reiterates the cicerone.

The visitor, pale with awe and terror, learns at last that there is in this world such a thing as *Death*, and (as he is forbidden to return to his own planet) he resolves to dedicate every moment left to him to prepare for that fearful event and all that may follow it.

Had that visitor heard for the first time upon his arrival on earth of another incident of human existence—namely, *Marriage*, it may be surmised that his astonishment and awe would also have been considerable. To his eager inquiry whether men and women earnestly strove to prepare themselves for so momentous an occurrence, he would have received the puzzling reply that women frequently devoted themselves with perfectly Hebraistic singleness of aim to that special purpose; but that men, on the contrary, very rarely included any preparation for the married state among the items of their widest Hellenistic culture. But this anomaly would be trifling compared to others which would be revealed to him. "Ah," we can hear him say to his guide, as they pass into a village church, "What a pretty sight is this! What is happening to that sweet young woman in white, who is giving her hand to the good-looking

fellow beside her; all the company decked in holliday attire, and the joy-bells shaking the old tower overhead? She is receiving some great honour, is she not? The Prize of Virtue, perhaps?"

"Oh, yes," would reply the friend; "an honour certainly. She is being Married." After a little further explanation, the visitor would pursue his inquiry:

"Of course, having entered this honourable state of matrimony, she has some privileges above the women who are not chosen by anybody? I notice her husband has just said, 'With all my worldly goods I thee endow.' Does that mean that she will henceforth have the control of his money altogether, or only that he takes her into partnership?"

"*Pas précisément*, my dear sir. By our law it is *her* goods and earnings, present and future, which belong to him from this moment."

"You don't say so? But then, of course, his goods are hers also?"

"Oh dear, no! not at all. He is only bound to find her food; and, truth to tell, not very strictly or efficaciously bound to do that."

"How! do I understand you? Is it possible that here in the most solemn religious act, which I perceive your prayer book calls 'The Solemnization of Holy Matrimony,' every husband makes a generous promise, which promise is not only a mockery, but the actual reverse and parody of the real state of the case: the man who promises giving nothing, and the woman who is silent giving all?"

"Well, yes; I suppose that is something like it, as to the letter of the law. But then, of course, practically——"

"Practically, I suppose few men can really be so unmanly and selfish as the law warrants them in being. Yet, some, I fear, may avail themselves of such authority. May I ask another question? As you subject women who enter the marriage state to such very severe penalties as this, what worse have you in store for women who lead a dissolute life, to the moral injury of the community?"

"Oh, the law takes nothing from them. Whatever they earn or inherit is their own. They are able, also, to sue the fathers of their children for their maintenance, which a wife, of course, is not allowed to do on behalf of *her* little ones, because she and her husband are one in the eye of the law."

"One question still further—your criminals? Do they always forfeit their entire property on conviction?"

"Only for the most heinous crimes; felony and murder, for example."

"Pardon me; I must seem to you so stupid! Why is the property of the woman who commits Murder, and the property of the woman who commits Matrimony, dealt with alike by your law?"

Leaving our little allegory, and in sober seriousness, we must all admit that the just and expedient treatment of women by men is one of the most obscure problems, alike of equity and of policy. Nor of women only, but of all classes and races of human beings whose condition is temporarily or permanently one of comparative weakness and dependence. In past ages, the case was simple enough. No question of right or duty disturbed the conscience of Oriental or Spartan, of Roman or Norman, in dealing with his wife, his helot, his slave, or his serf. "*Le droit du plus fort*" was unassailed in theory and undisturbed in practice. But we, in our day, are perplexed and well nigh overwhelmed with the difficulties presented to us. What ought the Americans to do with their negroes? What ought we to do with our Hindoos? What ought all civilised people to do with their women? It seems very easy to go on driving down the "high *à priori*" road of equal rights for all human beings, but, as it is quite clear that children and idiots cannot be entrusted with full civil and political rights, the question always resolves itself into the further one; where shall we draw the line? When has a human being fairly passed out of the stage of pupilage, and attained his majority?

At the head of this paper I have placed the four categories under which persons are now excluded from many civil, and all political rights in England. They were complacently quoted last year by the *Times* as every way fit and proper exceptions; but yet it has appeared to not a few, that the place assigned to Women amongst them is hardly any longer suitable. To a woman herself who is aware that she has never committed a crime; who fondly believes that she is not an idiot; and who is alas! only too sure she is no longer a minor,—there naturally appears some incongruity in placing her, for such important purposes, in an association wherein otherwise she would scarcely be likely to find herself. But the question for men to answer is: Ought Englishwomen of full age, in the present state of affairs, to be considered as having legally attained majority? or ought they permanently to be dealt with, for all civil and political purposes, as minors? This, we venture to think, is the real point at issue between the friends and opponents of "women's rights," and it would save, perhaps, not a little angry feeling and aimless discussion, were

we to keep it well in view, and not allow ourselves to be drawn off into collateral debates about equality and abstract rights. Let us admit (if it be desired) that the pupilage in which women have been hitherto kept has been often inevitable, and sometimes salutary. The question is, should it be prolonged indefinitely?

In the present paper we shall attempt to consider the most striking instance wherein the existing principle presses upon women, and where its injustice appears most distinctly,—namely, in the regulation of the Property of Married Women under the Common Law. We shall endeavour to do this with all possible fairness and equanimity. The acrimony which too often creeps into arguments on this subject is every way needless and mischievous. Of course it is not pleasant to women to be told they are “physically, morally, and intellectually inferior” to their companions. Nevertheless, they are foolish to be angry with the man who in plain words says straightforwardly that, in his opinion, such is the case. After all, he pays them a better compliment than the fop who professes to adore them as so many wingless angels, and privately values them as so many dolls. In any case all such discussion is beside our present aim. We shall endeavour, in these pages, neither to talk with one party, as if all instinct and feeling were the creatures of law, and could be altered by “An Act to Revise the Constitution of Human Nature;” nor with another, as if the particular sentiment of our age and country about “Woman’s Sphere” were the only possible standard of legislation for all time. If, as Pope said, “the world were inhabited by men, women, and Herveys,” we should endeavour to write like a Herveys, to do justice to both the other parties!

Mr. G. Shaw Lefevre last summer carried through two readings in parliament, and obtained a favourable report upon, “A Bill to Amend the Law with respect to the Property of Married Women.”* Let us briefly state what is the existing law which it is proposed to amend; what may be urged in its behalf; and what may be said against it.

By the Common Law of England a married woman has no legal existence, so far as property is concerned, independently of her husband. The husband and wife are assumed to be one person, and that person is the husband. The wife can make no contract, and can neither sue nor be sued. Whatever she possess of personal property

* Since Mr. Lefevre’s accession to office, the care of the Bill has been undertaken by Mr. Russell Gurney.

at the time of her marriage, or whatever she may afterwards earn or inherit, belongs to her husband, without control on her part. If she possess real estate, so long as her husband lives he receives and spends the income derived from it; being only forbidden to sell it without her consent. From none of her property is he bound to reserve anything, or make any provision for her maintenance or that of her children. This is the law for all, but practically it affects only two classes of women, viz., those who marry hurriedly or without proper advisers, and those whose property at the time of marriage is too small to permit of the expense of a settlement; in other words, the whole middle and lower ranks of women, and a certain portion of the upper ranks. Women of the richer class, with proper advisers, never come under the provisions of the common law, being carefully protected therefrom by an intricate system elaborated for the purpose by the courts of Equity, to which the victims of the Common Law have for years applied for redress. That system always involves considerable legal expenses, and an arrangement with trustees which is often extremely inconvenient and injurious to the interests of the married couple; nevertheless it is understood to be so great a boon that none who can afford to avail themselves of it, fail to do so.

What, then, is the principle on which the Common Law mulcts the poorer class of women of their property and earnings, and entails on the rich, if they wish to evade it, the costs and embarrassment of a marriage settlement? There is, of course, a principle in it, and one capable of clear statement. There are grounds for the law; first of Justice, then of Expediency, lastly (and as we believe) most influential of all, of Sentiment. Let us briefly describe them as best we can.

First, the grounds of Justice.

Man is the natural bread-winner. Woman lives by the bread which man has earned. Ergo, it is fit and right that the man who wins should have absolute disposal, not only of his winnings, but of every other small morsel or fraction of earnings or property she may possess. It is a fair return to him for his labour in the joint interest of both. He supports her, pays any debts she has incurred before or after marriage, and provides for the children which are hers as well as his. For all this, it is but just he should receive whatever she has to give. The woman’s case is that of a pauper who enters a workhouse. The ratepayers are bound to support him; but if he have any savings they must be given up to the board. He cannot both claim support and keep independent property.

Then for Expediency. "How can two walk together except they be agreed?" says the Bible. "How can they walk together except one of them have it all his own way?" says the voice of rough and ready John Bull. Somebody must rule in a household, or everything will go to rack and ruin; and disputes will be endless. If somebody is to rule it can only be the husband, who is wiser, stronger, knows more of the world, and in any case has not the slightest intention of yielding his natural predominance. But to give a man such rule he must be allowed to keep the purse. Nothing but the power of the purse—in default of the stick—can permanently and thoroughly secure authority. Besides, for the good of the whole family, for the children and the wife herself, it is far more expedient that all the resources of the family should be directed by a single hand, and that hand the one that can best transact business of all kinds. Equally then, as a matter of Justice to the husband, and of Expediency for the interests of the family at large, the law of England has decreed, as aforesaid, that all a woman's present and prospective property becomes on marriage the property of her husband.

But where women are concerned, English law ceases to be a dry system, regardful only of abstract justice and policy. Themis, when she presides at the domestic hearth, doffs her wig, and allows herself to be swayed by poetical, not to say romantic, considerations. We are rarely allowed, in debate, it to examine accurately the theory of conjugal justice. We are called upon rather to contemplate the beautiful ideal of absolute union of heart, life, and purse which the law has provided for, and which alone it deigns to recognise. If it so happen that happy married couples do not want the law to provide for them, and that the troubles of unhappy ones are greatly aggravated by the law *not* providing for them, we are told that it is an inconvenience to be regretted, but that it is counterbalanced by the great public benefit of the existing system. That the legislative judgment of England should hold up before the world a perfect picture of what it understands that married life *ought* to be, is affirmed to be of much more consequence than that it should try to mend cases which must be bad at the best.

Now, let us admit heartily that there is much sense in these arguments of justice and expediency, and much beauty in this ideal of absolute union of interests. In what may fairly be taken as typical marriages, where the man labours all day in the field or the office, and the woman provides for the household at home, the woman *has* no

earnings independently of her husband, and what she has earned or inherited before marriage is employed for some purpose common to the family. There is no injustice here. When we remember the thousands of husbands and fathers who thus labour all their lives long for their wives and children—so commonly that it is only the exceptional selfishness we notice, never the rule of manly unselfishness—it may appear the plainest justice, that he on whom all depends (the "houseband," as our ancestors well called him,) should have all the power as well as the toil. True that men have other motives for work beside the love of their families; they have interest in their pursuits, ambition, and pride. Many a bachelor, with none to come after him to inherit his store, labours as sedulously to increase it as the most devoted of parents. But with how many hundreds and thousands is it otherwise! How many men long and pine to cast down the spade or the pen, to leave the bleak field for the fireside, the gloomy shop or office for the streets and the hills; and *could* do so in a moment and live in comfort with a quarter of their present toil, were it not for the thought of the wife who is sitting at home rocking the cradle, or the young daughters who are asking for all the luxuries and flipperies of fashion! We have heard a boy remark, that when he grew up he would never marry, because he noticed that when men married their wives enjoyed everything, and they had only to work harder than before. There was a good deal of truth in the remark; as doubtless the *Saturday Review* would readily corroborate. In the large sense and the common run of life, men are wonderfully unselfish towards women; and the general feeling of society has actually constituted it a rule that they should be expected to be so. Is it not, then, plainly just that he who plants the vineyards should eat—or at least have the distribution—of *all* the fruit thereof?

Then, again, for Expediency. How ignorant are most women in money concerns! How little they understand the commonest transactions, and how liable they are to be cheated, when they flatter themselves they do understand them! In the lower classes, as a general rule, women are more stupid than men; the feminine brain, such as it is, less well bearing rough usage, and the education of girls being inferior to that of boys. For the benefit of both husband, wife, and children, is it not every way expedient to make the wiser of the two keep the common purse?

Lastly, for the Sentimental view. How painful is the notion of a wife holding back her money from him who is every day toiling for

her support! How fair is the ideal picture of absolute concession on her part of all she possesses of this world's dross to the man to whom she gives her heart and life! How magnificent in its unreserve is Portia's endowment of Bassanio, as quoted by Mr. Lefevre:—

Myself and what is mine, to you and yours
Is now converted. But now I was the lord
Of this fair mansion, master of my servants,
Queen o'er myself; and even now, but now,
This house, these servants, and this same myself
Are yours, my lord!

And in the humbler ranks, how sweet is the corresponding idyllic picture! The young man and maiden, after years of affection, and careful laying by of provision for the event, take each other at last, to be henceforth no more twain, but one flesh. Both have saved a little money, but it all now belongs to the husband alone. He lays it out in the purchase of the cottage where they are henceforth to dwell. Day by day he goes forth to his labour, and weekly he brings home his earnings, and places them in his wife's lap, bidding her spend them as she knows best for the supply of their homely board, their clothing which her deft fingers will make and many a time repair; and at last for their common treasures, the little children who gather around them. Thus they grow old in unbroken peace and love, the man's will having never once been disputed, the wife yielding alike from choice and from necessity to his superior sense and his legal authority.

Surely this ideal of life, for which the Common Law of England has done its utmost to provide, is well worth pondering upon before we attempt to meddle with any of its safeguards? Who will suggest anything better in its room?

Alas! there are other scenes besides idylls of domestic peace and obedience promoted by the law we are considering. We must look on the dark side as well as on the bright, before we determine that its preponderating influence is beneficial. But of these we shall speak hereafter. Before doing so we must traverse once more, and a little more carefully, the ground we have gone over. Is the Justice, is the Expediency, is the Sentiment of the Common Law all that appears at first sight?

What, in the first place, of the Justice of giving all a woman's property to her husband? The argument is, that the wife gets an ample *quid pro quo*. Does she get it under the existing law? That is the simple question.

In the first place, many husbands are unable, from fault or from

misfortunes, to maintain their wives. Of this the law takes no note, proceeding on reasoning which may be reduced to the syllogism:

A man who supports his wife ought to have all her property;

Most men support their wives;

Therefore, ALL men ought to have all the property of their wives.

Let us suppose the managers of a public institution to engage with a contractor, to pay him £1,000 on the nail for the supply of the institution with provisions for a year. At the end of a month the contractor has spent the £1,000 on his own devices and is bankrupt. The institution starves accordingly. What, in such case, do we think of the managers who gave the £1,000 without security for the fulfilment of the contract, and what do we think of the contractor? But are not hundreds of husbands in the position of the contractor, yet rather pitied than blamed by public opinion? And is not the law in such cases precisely in the position of the reckless managers? When all that a woman possesses in the present and future is handed over unreservedly by the law to her husband, is there the smallest attempt at obtaining security that he on his part *can* fulfil that obligation which is always paraded as the equivalent; namely, the obligation to support her for the rest of her life? Nay, he is not so much as asked to promise he will reserve any portion of her money for such purpose, or reminded of his supposed obligation. If he spend £10,000 of her fortune in a week in paying his own debts, and incapacitate himself for ever from supporting her and her children, the law has not one word to say against him.

But waiving the point of the *inability* of many husbands to fulfil their side of the understood engagement, one thing, at all events, it must behove the law to do. Having enforced her part on the woman, it is bound to enforce his part on the man, *to the utmost of his ability*. The legal act by which a man puts his hand in his wife's pocket, or draws her money out of the savings' bank, is perfectly clear, easy, inexpensive. The corresponding process by which the wife can obtain food and clothing from her husband when he neglects to provide it, what may it be? Where is it described? How is it rendered safe and easy to every poor woman who may chance to need its protection? When we are assured that men are always so careful of the interests of the women for whom they legislate, that it is quite needless for women to seek political freedom to protect themselves, we might be inclined to take it for granted that here, if anywhere, here where the very life and subsistence of women are concerned, the legislation

of their good friends and protectors in their behalf would have been as stringent and as clear as words could make it. We should expect to find the very easiest and simplest mode of redress laid open to every hapless creature thus reduced to want by him to whom the law itself has given all she has ever earned or inherited. Nay, seeing the hesitation wherewith any wife would prosecute the husband with whom she still tries to live, and the exceeding cowardice and baseness of the act of maltreating so helpless a dependant, it might not have been too much had the law exercised as much severity in such a case as if the offender had voluntarily starved his ass or his sheep, and the Society for the Prevention of Cruelty to Animals were his prosecutors.

But this is the imaginary, what is the actual fact? Simply that the woman's remedy for her husband's neglect to provide her with food, has been practically found almost unattainable. The law which has robbed her so straightforwardly, has somehow forgotten to secure for her the supposed compensation. Since 1857, if the husband altogether forsake his home for years together, the wife may obtain from the magistrate a Protection Order, and prevent him from seizing her property. But, if he come back just often enough to keep within the technical period fixed as desertion, and take from her everything she may have earned, or which charitable people may have given her, then there is absolutely no resource for her at all. The guardians of her union, if she ask to be admitted into the workhouse, may, if they please, receive her, and prosecute her husband, at the petty sessions, for putting the parish to the expense of supporting his wife. But the guardians are not obliged to admit her, and the trouble and cost of prosecution is an argument which frequently weighs with them against doing so. Then, as if to add insult to injury, when the poor wretch, driven from the shelter of the workhouse, and perhaps on the point of bearing a child to the man who is starving her, goes to the magistrate to implore protection, what answer does she receive? She is told that he cannot hear her complaint; that she cannot sue her husband, as he and she are one in the eye of the law.*

* A horrible instance in point occurred near Gainsborough, in Lincolnshire. The evidence given on the inquest was published in the *Lincolnshire Chronicle*, July 5, 1863.

The parish surgeon wrote thus to the clergyman of the parish, who was also a magistrate:—

“Dear Sir,—I have to-day seen Mrs. Seymour. I found her in a wretchedly weak state. She is nursing a baby, which office she is not able to perform effectually

Again, the common law fails to secure justice to the wife, not only during her husband's life, but after his death. The following story was published many years ago in the *Westminster Review*, as having then recently occurred. We cannot vouch otherwise for its veracity, and must quote from memory, but, if it be only taken as a hypothetical case, what a lesson does it convey! A gentleman, of landed estate, in the north of England, became involved in debt, and finally ruined, and reduced to actual want. His wife, a lady of ability and spirit, finding him incapable of any effort for their joint support, opened a little shop for millinery in the county town. Her old friends gave her their custom, and her taste and industry made it a thriving business. For many years she maintained her husband and herself, till at last having realised a small competency, and grown old and feeble, she sold her shop, and retired to spend, as she hoped, in peace with her husband, the remaining years of her life. After a short time, however, the husband died, duly nursed and tended to the last by his wife. When he was dead he was found to have left a will, by which he bequeathed every shilling of his wife's earnings to a mistress he had secretly maintained. Either the wife had originally married without a settlement, or her settlements had not contemplated so singular a fact as her earning a fortune. The husband's will, therefore, was perfectly valid, *and was executed*.

So much for the Justice of the Common Law. What now shall we say to its Expediency? The matter seems to lie thus. Men are usually more wise in worldly matters than women; more generally able and intelligent, and their wives habitually look up to them with even exaggerated confidence and admiration. Such being the case, it would naturally happen, were there no law in the case, that the husband should manage all the larger business of the family. The law, then, *when the husband is really wise and good* is a dead letter.

from her exhausted condition. Her husband, she says, does not allow her the necessaries of life, which he, in his position, could find if he liked. Without some means be taken to provide her with good diet, &c., or to make her husband do so, she must die of starvation at no very distant period. If you could, in your official capacity, help the poor creature, you would confer a great blessing on the poor woman, and oblige yours faithfully,
“J. C. SMALLMAN.”

The clergyman found, however, that he had no power as a magistrate to take cognisance of the case, unless the guardians would give the wife relief, and prosecute the husband; and this they declined to do. In vain did the poor half-starved wretch appear before them, and pray to be admitted into the workhouse. She was refused admission on the ground that her husband earned good wages; and so she went home, and, after lingering a while, probably fed now and then by her neighbours, she died. The husband escaped without any punishment whatever. The jury who tried him [*men*, of course!] gave him the benefit of a doubt as to the cause of his wife's death, and acquitted him.—*Illustrations of the Operations of our Laws*, p. 8.

But for the opposite cases, exceptions though they be, yet alas! too numerous, where the husband is a fool, a gambler, a drunkard, and where the wife is sensible, frugal, devoted to the interests of the children,—is it indeed Expedient that the whole and sole power should be lodged in the husband's hands; the power not only over all they already have in common, but the power over all the wife can ever earn in future? Such a law must paralyse the energy of any woman less than a heroine of maternal love. How many poor wives has it driven to despair, as one time after another they have been legally robbed of their hard won earnings, who can calculate? * One such hapless one, we are told, † when her lawful tyrant came home as usual, drunk with the spoils of her starving children, took up some wretched relic of their ruined household and smote him to death. She was a murderess. In former times she would have been burnt alive for "petty treason" for killing her lord and master. But what was the law which gave to that reckless savage a power the same as that of a slave-holder of the South over his slave? Another case, still more recent, will be in the memory of many of our readers. Susanna Palmer was indicted on the 14th of January, 1869, at the Central Criminal Court, for wounding her husband in a struggle, in which it appeared he had, while drunk, endeavoured to wrench a table knife from her hand at supper. The evidence, which has since been carefully sifted and amply corroborated, showed Susanna Palmer to be a most industrious and sober woman. For twelve years since her marriage with James Palmer she has managed to support herself and her four children, having received from him during that period the sum of *five shillings* for the purpose. He has been four or five times in gaol for beating her, knocking out her teeth, and nearly killing her boy. Each time he returned from prison only more brutal and rapacious, and seized whatever money or furniture she had managed to obtain, breaking up her home over and over again. She applied to the magistrates at Clerkenwell for a Protection Order, to enable her to retain her earnings, but was refused it as her husband had not "deserted" her; and, of course, had not the slightest intention of doing so. The law, as it at present exists, has absolutely no help to

* See the overwhelming evidence on this point given before the parliamentary committee this last session, by the Rev. S. Hansard, rector of Bethnal Green; J. S. Mansfield, Esq., police magistrate of Marylebone; Mr. Ormerod, president of the Co-operative Society, at Rochdale; and Rev. Thomas Fowle, rector of Hoxton.—*Minutes of Evidence*, pp. 65-70.

† *Illustrations of the Operations of our Laws*, p. 13.

offer, and the charitable persons who desired to aid her have been compelled to place their contributions in the hands of the Ordinary of Newgate, in trust for her benefit.—(See *Times*, Jan. 15th and 16th, 1869.) Such cases, we believe, might be multiplied by scores; but it is rare that the woman's sobriety and industry do not break down under such trials, and the whole family go to ruin together.

It is continually repeated *in this connection only* that laws cannot take note of exceptional cases; they must be laid down to suit the majority, and the minority must do as best they can. But is there any other department of public justice in which the same principle is applied? What else is law *for*, but to be "a terror to evil doers"?—always, as we trust, in a minority in the community. The greater number of people are honest, and neither steal their neighbour's goods nor break into their houses. Yet the law takes pretty sharp account of thieves and burglars.

Setting up an ideal of perfect marriage union sounds very well. But what would it be to set up an ideal, say, between rich and poor, and to assume that what ought to be their relation in a Christian country actually is so? A new Poor Law based on the hypothesis that the Sermon on the Mount forms the rule of English life, to which the exceptions are too trifling to be regarded, would be at all events a novelty in legislation. Or rather, would it not correspond in spirit with the law we have been considering? The poor woman whose husband has robbed her earnings, who leaves her and her children to starve, and then goes unpunished because the law can only recognise the relation of husband and wife as it ought to be—and he and she are one before the law;—such a woman's case would resemble closely enough that of a pauper who should be told that the law can only recognise the relation of rich and poor as it ought to be; and that, as every one who has two coats must be assumed to give to him who has none, and from him that would borrow nobody can be supposed to turn away, the striking of a Poor's Rate in a Christian land must be wholly superfluous.

It is one of the numerous anomalies connected with women's affairs, that, when they are under debate, the same argument which would be held to determine other questions in one way is felt to settle theirs in another. If, for instance, it be proved of any other class of the community, that it is peculiarly liable to be injured, imposed on, and tyrannised over (*e.g.* the children who work in factories), it is considered to follow as a matter of course, that the law must step

in for its protection. But it is the alleged helplessness of married women which, it is said, makes it indispensable to give all the support of the law, *not* to them, but to the stronger persons with whom they are unequally yoked. "Woman is physically, mentally, and morally inferior to man." Therefore it follows—what?—that the law should give to her bodily weakness, her intellectual dulness, her tottering morality, all the support and protection which it is possible to interpose between so poor a creature and the strong being always standing over her? By no means. Quite the contrary, of course. The husband being already physically, mentally, and morally his wife's superior must in justice receive from the law additional strength by being constituted absolute master of her property. Do we not seem to hear one of the intelligent keepers in the Zoological Gardens explaining to a party of visitors:—"This, ladies and gentlemen, is an inoffensive bird, the *Mulier Anglicana*. The beak is feeble, and the claws unsuited for grubbing. It seems to be only intelligent in building its nest, and taking care of its young, to whom it is peculiarly devoted, as well as to its mate. Otherwise it is a very simple sort of bird, picking up any crumbs which are thrown to it, and never touching carrion like the vulture, or intoxicating fluids like the maccaw. Therefore, you see, ladies and gentlemen, as it is so helpless, we put that strong chain round its leg, and fasten it to its nest, and make the bars of its cage exceptionally strong. As to its rudimentary wings we always break them early, for greater security; though I have heard Professor Huxley say that he is convinced it could never fly far with them, under any circumstances."

But the great and overwhelming argument against the Expediency of the common law in this matter, is the simple fact that no parent or guardian possessed of means sufficient to evade it by a marriage settlement, ever dreams of permitting his daughter or ward to undergo its (alleged) beneficial action. The parent who neglected to demand such a settlement from a man before he gave him his daughter, would be thought to have failed in the performance of one of his most obvious and imperative duties. Even the law itself in its highest form in the realm (that of the Court of Chancery) always requires settlements for its wards. How then can it be argued that the same rule is generally considered Expedient, yet invariably evaded by all who are able to evade it?

Again. There is the test of experience. Are married couples with settlements obviously less harmonious, are they less united in

affection, are their children less well brought up than those who undergo the action of the law? When a woman has money of her own, so settled that she really has it for her separate use, do we find her always opposing her husband, and do her children seem to suffer from parental dissensions? Nay, let us go to the countries where no common law like ours exists at all, or where it has been repealed. In Russia marriage makes no difference in a woman's possession of property, to which also are attached the same political and municipal rights as belong to male proprietors. All that we know of Russian households is their peculiar harmony and mutual good feeling. And in the State of New York, where the Common Law was repealed in 1860, in Vermont, where it was changed in 1847, in Pennsylvania, where it was changed in 1848, and in Massachusetts, where it was changed in 1855, the report of the action of the new law, whereby the woman holds her own property and earnings, is entirely satisfactory. The following are some of the testimonies to the fact, collected by the Parliamentary Committee:—"Mr. Washbourne, formerly Governor of Massachusetts, and now Professor of Law at Harvard University, and who allows that he viewed the change with apprehension that it would cause angry and unkind feelings in families, and open the door for fraud, now admits that he is so far convinced to the contrary, that he would not be one to restore the common law if he could. Any attempt to go back to it would meet with little favour at this day. The oral evidence we have received from members of the Vermont and Massachusetts bars, from Mr. Cyrus Field, of New York, and from the Hon. J. Rose, Finance Minister of Canada, is to the same effect. They state that the change has given entire satisfaction; that it has not caused dissension in families; . . . that the benefit has chiefly accrued to women of small means. Mr. Wells, Judge of the Supreme Court of Massachusetts, says:—"That for which the law seems to me most commendable is the power which it gives to women of the poorer classes to control the fruits of their own labour. Many women of that class are left to struggle against the hardships of life, sometimes with a family of children, abandoned by their husbands, or, still worse, with a drunken, thriftless, idle vagabond of a man, claiming all the rights of a husband, and fulfilling none of the duties of the relation. When such men could take the hard earnings of their wives from service in the mills, and waste it upon their indulgences, no woman could have

“courage to struggle long in such a hopeless effort. In our manufacturing towns there are a great many women thus situated, who are saved from the most hopeless poverty and slavery by this most just provision, which gives them the right to receive and to hold the wages of their own labour. The misfortune has been, that the more ignorant and degraded men were, the more rigorously they insisted upon and exercised their marital rights. . . . The law, by this change in the relative rights of husband and wife, has brought to the women of the poorer class a relief which touches the ‘spring of hope and energy.’ Mr. Dudley Field says of it, ‘Scarcely one of the great reforms which have been effected in this State have given more satisfaction than this.’”*

With such examples before us, it truly seems impertinent to talk of Expediency. The only persons for whom the existing law is expedient are fortune-hunters, who, if they can befool young women of property so far as to induce them to elope, are enabled thereby to grasp all their inheritance. Were there no such law as the cession of the wife’s property on marriage, there would be considerably fewer of those disgusting and miserable alliances where the man marries solely to become possessed of his wife’s money.

But, as we have said already, there is an argument which has more force in determining legislation about marriage than either considerations of Justice or of Expediency. It is the Sentiment entertained by the majority of men on the subject; the ideal they have formed of wedlock, the poetical vision in their minds of a wife’s true relation to her husband. Legislators talk in parliament with a certain conviction that the principles of fairness and policy are the only ones to be referred to *there*. But whenever the subject is freely discussed, in private or in a newspaper, there is sure to burst out sooner or later the real feeling. Nothing can be more amusing than to watch such spontaneous outbreaks of the natural man in the dignified columns of the *Times*, or the hard-hitting periods of a well-known writer in the *Pall Mall Gazette*. Let us try to fathom this sentiment, for till we understand it we are but fighting our battles in the dark. Is it not this: that a woman’s whole life and being, her soul, body, time, property, thought, and care, ought to be given to her husband;

* *Special Report of Parliamentary Committee on Married Women’s Property Bill.* It is satisfactory to know that separate property and the right of contract, has been accorded to married women by the new law of India, compiled by some of the ablest lawyers in this country:—Lord Romilly, Sir W. Erle, Mr. Justice Willes, Sir Edward Ryan, and Mr. Lowe.

that nothing short of such absorption in him and his interests makes her a true wife; and that when she is thus absorbed even a very mediocre character and inferior intellect can make a man happy in a sense no splendour of endowments can otherwise do? Truly I believe this is the feeling at the bottom of nearly all men’s hearts, and of the hearts of thousands of women also. There is no use urging that it is a gigantic piece of egotism in a man to desire such a marriage. Perhaps it is natural for him to do so, and perhaps it is natural for a great number of women to give just such absorbed adoring affection. Perhaps it is a tribute to the infinite nature of all love, that for those who know each other best, as a wife knows her husband, there is no limit to human affection. At all events it seems a fact that the typical man (if we may call him so) desires such love, and the typical woman is ready to give it to him. He is impatient at the notion of a marriage in which this conception of absolute absorption of his wife’s interests in his own shall not be fulfilled; and, so far as legislation can create such an ideal, he is resolved that it shall do so.

So far all is plain, but the question is this: Supposing such marriages to be the most desirable, do men set the right way about securing them, by making such laws as the Common Law of England? Is perfect love to be called out by perfect dependence? Does an empty purse necessarily imply a full heart? Is a generous-natured woman likely to be won, and not rather to be alienated and galled, by being made to feel she has no choice but submission? Surely there is great fallacy in this direction. The idea which we are all agreed ought to be realised in marriage is that of the highest possible Union. But what is that most perfect union? Have we not taken it in a most gross commercial sense, as if even here we were a nation of shopkeepers? Let us go into this matter a little carefully. It is rather instructive.

Husband and wife, in the eye of the poet, the divine, and—shall we say, the Judge of the Divorce Court? are “not twain, but one flesh.” I know not whether Mr. Darwin will sanction that theory concerning the Origin of Species, which tells us that

Man came from nothing, and by the same plan
Woman was made from the rib of a man;

or whether Dr. Carpenter and Professor Huxley have verified the anatomical doctrine held by our nurses, that in consequence of Adam’s sacrifice of his rib, men have ever since had one rib fewer than women. Still, however learned physiologists may decide this obscure problem,

we shall all agree that it is a noble oriental metaphor, to describe a wife's relation to her husband as "bone of his bone, and flesh of his flesh." But the union of two human beings may, as preachers say, be considered three ways. Firstly, there is the sort of union between any friends who are greatly attached to one another; a union oftenest seen, perhaps, between two sisters, who each have full liberty to come and go, and dispose of their separate resources, but who yet manage commonly to live in harmony and affection, and not unfrequently to bring up a whole batch of little nephews and nieces in their common abode. Two such we know, who for many years have kept the same account at their banker's, and say that they find only one serious objection to the plan—they can never make each other a present!

Secondly, there is the union of the celebrated Siamese twins, who are tied together—not by Mother Church but by Mother Nature—so effectually that Sir William Fergusson and Sir William Wilde are equally powerless to release them. Each of them has, however, the satisfaction of dragging about his brother as much as he is dragged himself; and if either have a pocket, the other must needs have every facility of access thereto.

Lastly, for the most absolute type of union of all, we must seek an example in the Tarantula spider. As most persons are aware, when one of these delightful creatures is placed under a glass with a companion of his own species, a little smaller than himself, he forthwith gobbles him up; making him thus, in a very literal manner, "bone of his bone" (supposing tarantulas to have any bones) "and flesh of his flesh." The operation being completed, the victorious spider visibly acquires double bulk, and thenceforth may be understood to "represent the family" in the most perfect manner conceivable.

Now, of these three types of union, it is singular that the only one which seems to have approved itself, in a pecuniary point of view, to the legislative wisdom of England should be that of the Tarantula. Unless a man be allowed to eat up the whole of a woman's fortune, there is apparently no union possible between their interests. Partnerships, limited liabilities, and all other devices for amalgamation of property are here considered inadmissible. The way in which brothers and sisters settle their affairs when they reside under the same roof, would never suffice, it seems, to keep things straight between those who hold a yet more tender and trustful relationship.

Englishmen have, perhaps beyond all men, generous hearts and chivalrous natures. They delight in such glorious lines as that of their own poet:

Yet were life a charnel, where
Hope lay confined with Despair;
Yet were Truth a sacred lie,
Love were lust—if Liberty
Lent not life its soul of light,
Hope its iris of delight,
Truth its prophet's robe to wear,
Love its power to give and bear.*

Is it possible that one of them, whose eye kindles over such words, seriously believes that his own mother, sister, daughter, is made of such different clay from himself, as that for *her*, abject dependence is calculated to create and foster love, while for *him* it would be gall and wormwood, turning his affection into bitterness and revolt?

Truly I am persuaded it is not *thanks* to the Common Law, but in *spite* thereof, that there are so many united and happy homes in England.

To sum up our argument. The existing Common Law is not *just*, because it neither can secure nor actually even attempts to secure for the woman, the equivalent support for whose sake she is forced to relinquish her property.

It is not *expedient*, because while in happy marriages it is superfluous and useless, in unhappy ones it becomes highly injurious; often causing the final ruin of a family, which the mother (if upheld by law) might have supported single-handed. It is also shown not to be really considered expedient by the conduct of the entire upper class of the country, and even of the legislature itself, in the system of the Court of Chancery. Where no one who can afford to evade the law fails to evade it, the pretence that it is believed to be generally expedient is absurd. Further, the classes which actually evade it, and the countries where it is non-existing, show in no degree less connubial harmony than those wherein it is enforced.

Lastly, it does not tend to fulfil, but to counteract, the *sentiment* regarding the marriage union, to which it aims to add the pressure of force. Real unanimity is not produced between two parties by forbidding one of them to have any voice at all. The hard mechanical contrivance of the law for making husband and wife of one heart and mind is calculated to produce a precisely opposite result.

* Shelley's "Hellas."

The proposal, then, to abolish this law seems to have in its favour Justice, Expediency, and even the Sentiment which has hitherto blindly supported the law. As the Parliamentary Committee report, they are strongly of opinion "that the Common Law of this country, which gives the wife's property to her husband, should be repealed, and that the wife should have control over her property and earnings; and that her disability to contract and sue and be sued in respect of them should be removed."

That certain difficulties must arise in carrying out so extensive a change is obvious, yet they are probably less than might be supposed; and a brief trial of the working of a new law would enable the legislature to find out the weak point (if any) of their present Bill. As the committee remark:—"Questions of importance arise in settling details of such a matter. Whether, for instance, the poor law liability of the father for the maintenance of the children should be extended to the mother; whether the change should be confined to future marriages only, or should be applied to existing marriages where other property is acquired," &c.

One thing, however, was unanimously agreed upon, and it is an important point in question:—"It does not appear to be necessary to make any alteration in the liability of a husband to maintain his wife in consequence of such a change in the law with regard to the property of married women. A married woman, living apart from her husband, can only bind him for what is necessary, and the possession of property of her own, *pro tanto*, negatives the authority arising from necessity. A married woman, living with her husband, has an authority which, in spite of some fluctuations and uncertainty of judicial decisions, seems to be regulated by the general principle of the law of agency. Agency is a mixed question of law and fact, and the courts will give due weight to such a fact as the possession of property by a married woman, without any express statutable direction."* That such a change could not entail injurious consequences is guaranteed by two facts:—First, there follow no injurious consequences to the richer classes in England, by whom the law is practically set aside; second, there have followed no injurious results, but very beneficial ones, to the lower classes in the American States, by whom the law has been repealed. We have already cited the testi-

*Special Report from the Select Committee on Married Women's Property Bill, p. vii.

mony of the distinguished American lawyers, Mr. Dudley Field, Judge Welles, Governor Washbourne, and others, to this point.

Justice, Expediency, a truly guided Sentiment, and such experience as is yet attainable—all these, then, point unanimously to the repeal of the existing Common Law, as it touches the property of married women.

But leaving this special, though typical case of the Property of Married Women, may we not for a moment try to answer, if it be but vaguely, the larger question in which it is involved:—What ought to be the general tone of legislation, the general line of policy pursued in these days by English men towards English women? It is clear enough that we have come to one of those stages in human history which, like a youth's attainment of majority, makes some change in the arrangements of past time desirable, if not imperative. There is no use reverting, on the one side with pertinacious dogmatism, and on the other with scorn and indignation, to old Eastern, or Classic, or Feudal relations between men and women. Any one who has lived in southern and eastern lands can perfectly understand, from the nature of the women of those passionate races, how such states of things arose at first, and have been maintained ever since without blame or cruelty. In Feudal times, also, the blended chivalry and tyranny of men towards women was rather to be admired, for the chivalry then condemned for a tyranny which probably fell more lightly on women than on any inferior class of men in the social scale. But all these things are changed for us. Our Teuton race, from the days of Tacitus, has borne women whose moral nature has been in more than equipoise with their passions; and who have both deserved and obtained a freedom and a respect unknown to their sisters of the South. As the ages of force and violence have passed away, and as more and more room has been left for the growth of gentler powers, women (especially in England) have gradually and slowly risen to a higher place. It is indeed quite possible still to point out thousands who are unfit for any important exercise of freedom, who are mere dolls, or something worse. Half the discussions which go on about women would be stopped at the outset, if the speakers could settle *what* women they are going to talk of; the women of strong characters, or the women who have as little character as their own looking-glasses. One woman lives for affection, for duty, for elevated and refined pleasures of taste and

intellect; not incapable of devoted love, yet not living with love alone in her thoughts; pleased to adorn her person, yet not dreaming and chattering of dress from morning till night. Another woman lives for admiration and passion, for low pleasures of vanity and sense; having for her sole ambition to befool the men who surround her, and for her sole serious employment to deck herself for their gaze. To one the society of men and women is equally interesting, provided each be equally intelligent. To the other, the presence of a man, be he almost an idiot, is so exciting and delightful that every woman in company is forgotten, and the most ludicrous changes of tastes and opinions are effected at a moment's notice, to fall in with his pleasure, as if they were the furniture of a lodging-house, to be moved to suit a new lodger. As George Sand says: if the minds of such women have received any impression over night, it is carefully smoothed down next morning, like a gravel walk, *avec le rateau*, to be quite ready to receive a fresh impression from the next visitor.

Such are the differences, the contrasts rather, between two orders of women; and it is not unnatural that when "women's rights" are under discussion and one interlocutor is thinking of one sort of woman, and the other of the other, they should not readily agree to what is either just or expedient to be done for them. It seems equally out of question to withhold the franchise from Florence Nightingale when she asks for it,* or to grant it to the "Girl of the Period." Unfortunately, as strong minded women are apt to associate only with the strong of her own sex, and as men are apt to be a good deal more familiarised with the man-adoring type of women than with them, it is common when they argue for each to go on contradicting the other without the slightest hope of coming to an understanding.

But it must be granted, we think, that the numbers of those of whom Pope could affirm that

Most women have no characters at all,

has a tendency to diminish year by year; and the numbers of the women with characters to increase. How much faster the alteration will go on under improved education, if such splendid schemes as that of Miss Davies' and Madame Bodichon's College can be carried out, is hard to judge. Already the classification of which we have already spoken, with the "idiots" and the "minors," seems hardly such as the

* As she has done, along with such women as Mrs. Somerville, Harriet Martineau, and Anna Swanwick, &c.

scientific intellect would be satisfied with in other departments of zoology. Shall we say it resembles the botanical scheme of the governess who informed her pupils that "plants are divided into Monandria, Bulbous Roots, and Weeds?"

We wish that we could persuade men more often to try and realise for themselves what is actually the life of a woman. Not as an appeal for compassion. It is very much to be questioned whether the warm affections and simple hearts of the better sort of women do not make life sweeter to them than to most men. "Happiness," says Paley, "is to be found no less with the purring cat than with the playful kitten." Enjoyment is a hardy little plant which grows at all altitudes above the level of actual starvation. There are glories of the nursery and ambitions of the kitchen which fill human hearts no less than the contests of the senate and the triumphs of the battle field. To the majority of men the life of a woman with its narrow household cares, its small social emulations, and its slightly flavoured pleasures, seems dull and insipid to the verge of disgust. Very few would hesitate to repeat the thanksgiving of the Rabbins for "being born of the human race, and not a brute; a Jew, not a Gentile; a man, and not a woman." Yet happiness is quite sufficiently elastic to shrink into the narrow circle of domestic life even while it is capable of stretching itself to the wide bounds of imperial power. Maria Theresa, and Catherine the Great might have made themselves content, the one perhaps as the mistress of a well frequented inn, or the other as an actress at a provincial theatre. Women who are not utterly ground down by the sordid cares of poverty, are quite as cheerful and a good deal more resigned to the decrees of Providence than their lords. It is, therefore, with a pity not dashed with compassion, but partaking of the tenderness wherewith we watch a child pleased with its doll and its baby-house, that men usually regard the lives of those dearest to them in the world. Were they ever to ask themselves how such an existence would suit *them*, they might perhaps be startled at the reflections which would suggest themselves. Any way I believe they would thenceforth carefully endeavour that none of the little patrimony of women's pleasures should be retrenched, none of the bounds of their interests and duties made narrower than nature herself has drawn them by the laws of their physical constitutions and their domestic affections.

Last summer the *Times* remarked that "when working men desired to have votes *they* threw down the park palings, but that

women have not shown their wish for the same privilege by any such proceedings." Were we not on that same enchanted ground whereon all arguments are turned topsy turvy, we should have supposed that the mob who attacked the police and spoiled the public park, and the women who stopped at home and signed Mr. Mill's petition, had respectively shown the one their *unfitness*, the other their fitness for the franchise of a law-respecting nation. But, in truth, women very rarely throw down *any* palings, either material or only imaginary; and they generally hurt themselves cruelly when they do so. Not for that reason ought men to refuse to them whatever rights may seem for them fairly established. Among these I trust, in the present paper, I have placed that of Married Women to the use of their own earnings and inheritances.

In conclusion, I would make one remark on the general question. Much time and more temper have been lost in debating the sterile problem of the "equality" of men and women, without either party seeming to perceive that the solution either way has no bearing on the practical matters at issue; since civil rights have never yet been reserved for "physical, moral, and intellectual" equals. Even for political rights, among all the arguments eagerly cited last year against extending the franchise, no one thought it worth while to urge that the class proposed to be admitted to them was, or was not, physically, intellectually, or morally inferior to the classes which already possessed it. As for civil rights—the right to hold property, to make contracts, to sue and be sued—no class, however humble, stupid, and even vicious, has ever been denied them since serfdom and slavery came to an end. If men choose to say that women are their inferiors in *everything*, they are free and welcome then to say so. Women may think that they are the equivalents, if not the equals of men; that beauty is as great a physical advantage as the strength which man shares with the ox; that nimble wits and quick intuitions are on the whole as brilliant, though not as solid intellectual endowments as the strong understanding and creative imaginations of men; and finally, that for morality,* that aged man is happy whose

* It must be confessed that, to a woman, the claim of superior *morality* for men sounds supremely absurd. Look at the three most hateful forms of vice—cruelty, drunkenness, unchastity—are they most common in women or in men? Watch for the first, the devil-vice of cruelty, among children. See how the little girl tends her birds and animals, and, as Chaucer describes her, "all conscience and tendre heart," "gretting" when anyone strikes her dog. See how her brother (brought up just as tenderly) begins in the nursery to pull flies to pieces, to worry the cat; then to terrify the sheep, to lay traps in the snow for sparrows. Observe how it is always his *mother's* soft words, his *sister's* tears, which win him at last, and make of him

conscience as he leaves the world is as void of grave offence as that of the majority of aged women. But whatever a woman may think on these subjects, she has no need to argue, much less to grow shrill and angry about it. "Granted," she answers to all rebuffs; "let me be physically, intellectually, and morally your inferior. So long as you allow I possess moral responsibility and sufficient intelligence to know right from wrong (a point I conclude you will concede, else why hang me for murder?) I am quite content. It is *only* as a moral and intelligent being I claim my civil rights. Can you deny them to me on that ground?"

that really tender-hearted being, a perfect English gentleman. It is never his schoolfellows who correct him, rarely his master. Watch the class below. Is it the poor wild street girls who persecute and stone to death the hapless lost dogs of London? Read the reports of the Society for the Prevention of Cruelty to Animals, and observe whether it be men or women who are commonly prosecuted for torturing domestic creatures. Would any *woman's* devotion to science (does the reader think) lead her to practise vivisection? Nay, but it is hard for a man to tell the misery and disgust, rising almost to revolt against the order of the world, which fills many a woman's heart when she sees daily around her the instances of man's wanton and savage cruelty to the harmless creatures for whom she can only plead, and pleads usually in vain. As I have been actually writing these pages, some dozen young men, of the labouring class, have passed under my window, pursuing, with volleys of heavy stones, a hapless little canary, which had escaped out of its cage, and, in its feeble flight, was striving to find shelter among the trees below. Is it needful to say there was no woman among the gang, and that the appeal of other women beside myself to give up their cruel chase, was unheeded? "It ought to be killed!" shouted one young ruffian in reply. A canary worthy of death! I sit down to pursue the theme of woman's moral inferiority. But where was I? Did I hear anybody say that women were more cruel than men?—or, perhaps, that cruelty is not the very crown of—shall we call it, Moral Superiority?