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LORD BROUGHAM'S  
SPEECH

ON THE

PROPERTY OF MARRIED WOMEN,

IN THE HOUSE OF LORDS,

FEB. 13TH, 1857.

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LONDON :  
JAMES RIDGWAY, PICCADILLY.

1857.

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# S P E E C H,

ETC.

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IN rising to address your Lordships upon the subject of which I have given notice, I cannot abstain from referring in the outset, to a most important event that has happened since I last had the honour of appearing among you—an event on which I would fain express my gratification if it were not unspeakable—I mean the resolution come to by the other House, and which I have a right to know from its votes, come to with a rare unanimity, and with a degree of enthusiasm which no votes can record, in favour of at length establishing a great Department of Public Justice. Your Lordships are aware how often I have pressed this upon your attention, year after year, in every form—by motion, by amendment, by resolution, by suggestion, down to the last time, a few hours ago, that I addressed you; and how constantly it has happened that from various points of view the same necessity has been perceived, that from measures in so many quarters the road has always led to the same point, when we would amend the Law or supply its defects, that point being a Minister of Justice; and now the Commons, to their signal honour, have announced their

conviction of this necessity, and embodied their opinion in a resolution affirming it without a dissenting voice. They wisely follow the opinion of the illustrious men who have gone before us, pondering upon it, when they traverse their vestibule, and walk among the sculptured forms of the Bacons, the Seldens, the Hardwickes. They have remembered the advice of the great orator to his Attic countrymen, that they should not gaze on the statues of their ancestors with a bootless wonder at the skill of the artist, but with a useful resolve to imitate the virtues of his subject. So the Commons have pursued the course which the wisest of those whom I have named powerfully recommended. And truly, my Lords, as there now seems every reason to believe that we shall at length possess the inestimable advantage of having this great officer to superintend the reformation of our Laws, I might almost abandon the motion of which I had given notice, and leave the subject in his hands. A Noble and Learned Friend (Lord Lyndhurst) more than once, with good humoured reference to diplomatic proceedings, and with his wonted kindness towards myself, has answered my calls for the appointment of such a minister by saying, that until his arrival I performed the duties of *chargé d'affaires*.

LORD CAMPBELL.— My Noble and Learned Friend will, it is to be supposed, be himself the Minister.

LORD BRUGHAM.— Heaven forbid ! No earthly inducement could make me even dream of under-

taking that or any other office of labour and responsibility, at my more than mature age. Indeed, I lately declined either to preside over the Charity Commission under one Government, or over the London University under another, with every feeling of deep interest in both these departments, in the foundation of which I had been so much concerned, and the administration of which would have been so light a burthen. But infinitely more is the contemplated new office of Justice, with its labours, duties, and heavy responsibility for me utterly and in every sense absolutely out of the question, in what way soever the department may be arranged, and the admitted difficulties in its formation be overcome. I fear me, then, that I must continue to act until the minister's arrival as charge d'affaires; and in this capacity I have now to direct the attention of your Lordships towards the important subject of my notice, the grievances of married women, especially in respect of their rights of property and its administration.

It may be in the recollection of your Lordships that I last session presented a petition, with which I had the honour to be intrusted, from two thousand and upwards of our fellow countrywomen of all classes; some supporting themselves by the wages of their daily labour; some having property bestowed upon them by the kindness of friends, or the testamentary bounty of persons deceased; others earning gains to a considerable, even to a large amount by their

industry and their talents, not a few even by their genius in letters and in the arts, as authoresses, as painters, and as sculptors ; and the names of several of these adorned the list of signatures to the petition, while they gave weight to its prayer. Now it must be remembered that all such earnings, whether the gains of the ordinary labourer who toils for the daily, the scanty supply of her own and her children's wants, or the Linwoods whose needle rivals the pencil of the Kaufmans—and all such gains are only in name theirs of whose toil and whose skill they are the produce. All in reality belong by our law's decrees to the husband, all are vested in him by right, and he may at his own good pleasure vest them also in possession ; nay never having in the least degree helped their production, he may without the delay, the respite of an instant, or one word of notice or warning, or even demand, seize upon the whole, sweep all away, and leave her who created the whole stript of them to the very last farthing. He may squander them upon his pleasures, lavish them on his paramour, employ them to support his spurious progeny, and there exists not the possibility of his being in any the very least degree either controlled or even called to account for the heartless cruelty of his robbery, or his profligate use of its fruits.

Such is the law of England, and of this law we complain. But I have the greater confidence in my prospect of obtaining the concurrence of this House in our views, because your Lordships and your con-

nections are not those on whom its pressure weighs so heavily. In your fortunate position, with the protection which settlements and the interposition of trustees afford, the grievance is felt, but it is comparatively slight; above all the worst part of the evil can hardly be felt in any way, for that refers to the earnings of labour and of skill, for the exertion of which for their support your wives are happily relieved. It is not upon the families of those whom I now address, or of persons generally in the upper ranks of society, but upon the middle classes and the humbler order of our fellow citizens that the evil falls, to crush their most deserving members, while it protects and even encourages the worst in their idleness or their profligacy. The instances which I have once and again given in this place, to shew how certainly the fact corresponds to whatever might have been most confidently expected beforehand to follow from the state of the law, I need not now repeat; they were truly heart-rending, and I gladly spare your feelings with my own the pain of their rehearsal. An instance or two may suffice, and I select the least painful of purpose. My Noble Friend opposite, the Noble Marquis (Lansdowne) stated one of them in his place. It was that of an industrious and honest woman who had married a good-for-nothing husband; (Hear, from Lord Lansdowne,) he deserted her and went to live with another. The wife took to the occupation of a ladies' shoemaker and earned a pittance for her own



support: when the husband found that she was thriving by her successful labour he returned to her, but for the moment only; he seized the little fund she had scraped together, collected the money due from the customers, sold her furniture, and went back to his paramour, leaving her as helpless as before, except for the resources of her own industry.— Another case came to my own knowledge, at least I saw the party and took pains to inquire into the truth of the statement. Here the parties were of higher rank. A gentlewoman had been deserted by her husband, who went with another woman to Australia upon a speculation of a mining kind. The wife, a well-educated person, most meritoriously took to school keeping for her support rather than throw herself upon the bounty of her relations; she was eminently successful in forming an establishment, and had been able to lay by some portion of her gains. The husband's speculation proved unsuccessful, and he could barely find the means of returning home. Home he came, and at once rushed upon the mine which his wife's labour, prudence, and accomplishments had created; seized the whole, collected the debts due, sold the furniture and the lease of the premises, and returned to enjoy the fruits of her toil, if enjoyment, such a thing in such circumstances, can be called—but his perverted taste might so feel it—at any rate he returned to squander the proceeds of his spoliation upon his mistress.

I freely admit, however, that though the recital of such outrages upon all right feelings as upon common honesty be serviceable by way of example, in shewing what the state of the law may lead to, yet they may possibly be treated as exceptions, as extreme cases, and it may be alleged that in the great number of married persons, some such instances of profligacy are likely to occur, and may be deemed singular and only possible. I therefore go at once to what cannot fall within the scope of such an observation. I go to the manufacturing districts from which our information is as precise as it is striking. From persons intimately acquainted with one of these resorts of labour, persons residing on the spot, we learn (and the case is the same with all the Lancashire country) the operation of the law upon the comfort and the morals of the working classes. You have only, it is said, to approach the premises of any of the manufacturers upon the Saturday night and observe the crowd of men that surround the door from whence issue the workwomen after receiving their week's wages at the pay-table; all who have husbands are seized by the hand, and with what in many instances proves anything rather than a soft violence, a gentle pressure, compelled to surrender their gains. In passing, I stop to remark, that the scenes which have been represented as witnessed near the pay-room on these occasions, afford a sufficient answer to the objection raised against giving women the property in their earn-

ings, from an apprehension that we should thus promote discord in the married pair; for those who have witnessed the struggles that so often take place in the immediate neighbourhood of the Lancashire pay-tables, affirm that there is little fear indeed, of more discord being engendered by the law that should protect the honest industry of the woman from the combined fraud and violence of the idle or dissolute husband.

There were other instances given at a meeting on this subject held under the patronage of the Law Amendment Society, last summer; ill-health prevented my attendance, and my Rt. Hon. and Learned Friend, Sir Lawrence Peel, who had undertaken to preside in my absence, was prevented by an accident; but there was no reason to lament certainly my absence, not even Sir L. Peel's, for the chair was filled most ably by my Rt. Hon. Friend, Sir J. Pakington, the able and enlightened supporter of so many good measures of legal and social improvement. A more detailed statement was produced than those to which I have hitherto adverted, and it is also material like the Lancashire case, as referring to an extensive and continued experience. A respectable manufacturer of an article in producing which women are employed, Mr. Musgrave of Mill Street, Berkeley Square, has for many years employed a great number of young persons, earning from 20s to 30s and as high as 40s a week. But these wages, he says, have too

often the effect of attracting husbands who are minded to lead an idle, and not rarely a dissolute life, upon the gains of their unfortunate partners. He gives this as the ordinary case, and describes in detail by way of explaining the grievous operation of the law, ten instances taken from the whole which came within his knowledge. The trades and professions of the husbands are given in his list (for some I grieve to say are professional men), or rather the pretended trade and profession, for they scarcely work at all, and seizing upon the hardly earned gains of their wives often leave them destitute, and always let their children frequent the streets instead of profiting by the schools so generally to be found in the neighbourhood, but to attend which would require decent clothing, and that must come out of the mother's earnings, which the dissolute father appropriates to himself.

Now the question only can arise as to the remedy for an evil of which no one can deny the existence and the pressure; and here I would take leave to draw the distinction which I took the other day in describing to your Lordships the proceedings of the Mercantile Law Conference. You are not to be concluded in the choice of measures for amending the Law by the suggestions, however unanimous, of the great mercantile bodies; but from their experience of the evil there is no appeal, because they are those whom the Law was framed to protect, and their suffering under it amounts to a demonstration of its imperfections.

So here — the classes who suffer under the Marriage Law may possibly be wrong in the kind of alteration which they claim for their relief, but their universal and loud complaints are the irrefragable proof of their suffering and their grievance. The opinion most generally entertained by those who had well considered the subject, pointed to one, and certainly the most simple remedy. It was said at the general meeting to which I have referred, and the Law Amendment Society have adopted the principle as then laid down by my Hon. and Learned Friend, Mr. Commissioner Hill, that as in case of intestacy the law makes a will for whoever dies without making one for himself, so where parties enter into the married state without a settlement, the law should vest the property, both before and after acquired, in the wife — of course, whenever the parties had made or contracted to make a different arrangement that must be the governing rule, and equally of course provision must be made for securing the husband against his wife's debts contracted before marriage, as well as against those contracted during the coverture. In other words, it is proposed as one mode of altering the law for the wife's protection, that where there is no settlement, she is to have the rights as regards property of a *femme sole*. (A Noble Lord — The children?) The children should, it was proposed, be maintained by both parties, the wife being equally liable with the husband when she had property of her own, either acquired before or after marriage. But this is not an untried law : it

exists in the greater part of the United States. Originally the English law prevailed there universally ; but for many years past it has been changed as I have described in the majority of the States, among others, in New York, Pennsylvania, the New England States ; in a word, the North and Central States. It is found, according to the united testimony of both the ablest lawyers and others independent of the profession, to have answered perfectly ; and they all deride the apprehension sometimes expressed that its tendency might be to increase the frequency of domestic quarrels. Indeed, they justly observe, that if such a fear was well-grounded, it must follow that quarrels between married persons would be promoted by the settlement, or the gift, of property to the wife's separate use, the ordinary case under our English system ; and yet the general opinion is that discord is rather prevented than promoted by such arrangements.

In France a different plan is pursued. It is a great mistake to suppose, as one often hears said, that the French law differs widely from our own touching the rights of married women. As regards these rights by law there is but little difference ; but there is a very great advantage enjoyed by the wife as regards her remedy in the difference of the judicial procedure ; and this leads me to the other course which your Lordships may take for the amendment of the law and the relief of the suffering class, should you not feel prepared to adopt what

upon the whole I am inclined to consider as the most safe and effectual solution of the difficulty, giving the wife the property notwithstanding coverture where there is no settlement. Of that system we have the experience of America; of the other we have that of France. It consists in giving the wife access to the judge not only in the suit for separation of property generally (*separation de biens*), as independent of separation of person (*separation de corps*), but an easier and more summary protection by what is termed *autorisation*. This is not an *ex parte* proceeding; the husband is cited, and heard if he thinks fit to oppose it; but it is expeditious and summary, and offers a most valuable remedy. Mr. Macqueen, in his admirable paper gives a striking instance of its application, which will more clearly bring the matter to our knowledge than any general description. A washerwoman belonging to the hotel in which he lately lodged was married to a man who had deserted her. He was apparently an idle, dissipated person; and his creditors came upon the wife's earnings, claiming to be paid out of them. When wanted in the way of her business at the house, she was not to be found; and it turned out she had obtained leave of absence for half a day to attend a Court. Before night-fall she returned, having been before the judge and obtained an order of *autorisation*, which at once effectually protected from the worthless husband's creditors, her money, probably in the hands of her employer the landlord of the hotel.

Of that **money** those creditors could not touch one farthing. Had the case occurred in this country I need hardly remind your Lordships that the poor woman would have been without protection or relief; **all her gains** must have gone to the husband or his creditors. The contrast between the two systems on opposite sides of the Channel I can illustrate by a case which was stated at the general meeting I have alluded to, by my Hon. and Learned Friend, Sir Erskine Perry, to whose strenuous assistance this question owes the greatest obligations, especially to his learned and able Report as chairman of the Committee of the Society, and who I hope may be induced to take up the subject in the other House, of which he is a distinguished member. To his labours indeed in that Committee I am indebted for the details of the Bill which I am about to present this day. The case which he described, and which I give as illustrating the contrast of the French and English laws in practical application, was that of a milliner in Paris, whose professional talents had attracted the notice of an English lady, from whom the narrative proceeded, and had induced her to recommend that this Parisian acquaintance should come over and settle in London. She came accordingly, and established herself here; she proved successful, and for some time carried on a flourishing business. The husband heard of her success, came suddenly over, pounced upon her earnings, sold her stock in trade, carried off the proceeds, collected the debts, and returned to Paris, leaving her to follow when she



could find the means of conveyance—" Oh Madam," said she on her departure, to her English friend, " how can you bear to live in such a country ?"

A Noble Lord—" So barbarous a country."

LORD BROUGHAM.—My Noble Friend is quite right in his recollection. Those were the expressions, and I cannot deny their justice ; for this country is, though not *simpliciter*, yet as the lawyers say, *secundum quid*, deserving to be called barbarous.

I feel it unnecessary to trespass further upon the House by entering into the arguments to which the resolutions of the Bill that I am about to propose may give rise. Ample opportunity will be afforded for discussing these in the further stages of the measure. At present I shall content myself with moving three resolutions before presenting the Bill. These will contain the principle of the measure—*First*, affirming that the state of the law on this important subject imperiously demands alteration, a proposition not admitting of any doubt. *Secondly*, that the new rule should be to place the married woman, where there is no settlement, in the position of *femme sole* with regard to property ; and on this a difference of opinion may be expected to exist. *Thirdly*, until that improvement of the law can be effected, to give the wife protection for her property against the exercise of the husband's strict rights by the interposition of a Court to which her access is rendered easy, and from which a speedy aid may be obtained.

I am well aware, my Lords, that the change in our Law which I now venture to propound, may be deemed by many too extensive and too sudden ; and some there doubtless are who will seek to discourage the friends of this measure with the prediction that it cannot be entertained, and never will be sanctioned by the Legislature. But I have too often met with such discouraging admonitions, such gloomy forebodings, to be cast down by them. I derive the greatest comfort now, as on so many former occasions, from the counsels and the achievements of those who have gone before us—from the counsels of the Cokes and the Bacons, and emphatically from that most consolatory saying of one of these illustrious men, that no good proposal for amending the law ever was made in vain, because how hopeless soever of acceptance, it might at first seem to be, yet in the end it was sure to produce good fruits. But we have facts and deeds in our own day to encourage us, as well as words of good import from those of other times—How well do many of us remember the history of the sacred war so long waged with the greatest practical evil in the annals of our race, as it was justly termed by Mr. Pitt, the African Slave Trade ! When Clarkson had dragged this infernal traffic before the public view, and Wilberforce had immortalised his name by bringing it to condemnation amidst the universal execration of mankind, all at once the horrors of West Indian insurrection, and the alarms of revolution in Europe, so

entirely abated the prevalent feeling, if not changed the general opinion, that for many long years, the cause of abolition was, by all but the most sanguine of philanthropists, regarded as hopeless, and its prospects of success as a thing out of date, gone by. Then came the Government of my Noble Friend opposite (Lord Lansdowne), and his colleagues, the Foxes, the Grenvilles, the Greys, the Hollands; and the traffic was by Act of Parliament declared unlawful, and forbidden. A few years after, it having been found that pecuniary penalties were ineffectual to the destruction of so gainful a traffic, I had the unspeakable satisfaction of obtaining your consent to the Bill, which treated it no longer as a trade but a crime, giving it the name of felony and denouncing against its perpetrator the punishment of a felon. This Bill passed without a dissentient voice through all its stages; and but a few years before the traffic was regarded as not only an innocent, but a most meritorious, because most gainful, branch of British commerce. But no measure could as yet be attempted for the extinction of slavery, even by those most hostile to the traffic. Mr. Stephen, however, toiled for years to put that down also; and though he lived not to see the fruits of his pious labours matured, heaven be praised, by acts both of the Imperial and Colonial Legislatures, slavery soon ceased to pollute the soil of the British dominions—a consummation deemed impossible for full twenty years after the first abolition. In later times, and in other

respects, we find the like grounds of hope for the zealous and untiring amenders of the law. It is impossible to pronounce the name, the beloved and revered name of Romilly, without deeply lamenting that he was not spared to witness the successful issue of his efforts to improve our jurisprudence; but also it is impossible to forget how very inconsiderable were the measures to which he wisely confined his first attempts, and how hopeless his plans of reform were, when such very moderate proposals were received with a storm of reprobation that seemed to shut out all hope of any change, any improvement being effected. His first proposition was nothing more violent than compelling all men to do what every honest man does—pay his debts out of his freehold estates; debts probably contracted for the sums with which those estates had been purchased, in order to be left to his heir, without a farthing being paid to the men whose money had been so employed. This proposal was met with the cry raised expressly for the purpose of extinguishing it, the cry of the wisdom of our ancestors—a wisdom it should seem not much associated with honesty: and my Noble Friend opposite (Lord Lansdowne) may recollect that no less an authority than Sir W. Grant lent his countenance to the senseless clamour, when my Noble Friend distinguished himself by undertaking the adventurous office of answering that truly great speaker. Again, when in attempting to amend the Criminal Law, and except from its infliction of capital punish-

ment certain very trifling offences, the illustrious lawyer, whom I have named, wholly failed to prevent death being inflicted upon the offence of stealing five shillings in a dwelling. Could anything wear a more discouraging aspect than the often repeated failure of such attempts to take some very small step in advance of the age; and who could then have believed that within less than a single generation after Romilly's plan had been taken up by Sir J. Mackintosh, and the government had come into the hands of Lord Melbourne and Lord J. Russell, we should have lived to see not only those bills of Romilly carried without the least opposition, but all capital punishment abolished except for three peculiar offences, and the English Law become the model of humanity and mercy, which in his time had been justly likened to the Laws of Draco, written in blood! It is a fit study for the Legislature as well as for the unshrinking friends of legal improvement, to mark how many of the great English reformer's plans, once deemed hopeless, have since become law; and while the individual derives the comfort of hope in his pursuits, the State may derive a lesson in favour of those other schemes of Law Amendment which Romilly framed, but which have not yet received Legislative sanction.

I can cite other instances of the same kind, inspiring the like hopes, and teaching the same lessons—instances within the recollection of all your Lordships. I might go back to earlier proposals of mine

before the Law Amendment Society was established. But I shall confine myself to the bills presented to your Lordships in one session, 1845. I then laid nine bills on your table for removing great defects in our Law, and asked your attention to the grounds on which these measures were proposed. I doubt if there was more than one of the bills which most men did not deem it impossible to carry ; and I was met in almost every quarter with the charge of attempting impossibilities. Yet seven of the nine bills were passed, and their provisions are now the law of the land ; including that blessed measure for the better administration of justice, the allowing parties to be examined as witnesses in all civil causes but two, a proposition at the time deemed more hopeless than any of the whole number brought forward, and which yet passed into a law within six years from the time of its being denounced as wild and desperate. From another of those bills almost, though not quite, as much denounced as the rest, I lived to hear the law agent of a noble friend of mine, a member of the Society, declare in his Grace's presence there, that a saving of £4000 had been effected in one year in the administration of his extensive estates.

Such, my Lords, are the grounds on which I venture to build my sanguine hopes, let me say my confident expectation, that measures for the amendment of our Laws like those for which I now crave your favourable attention, may ere long be sanc-

tioned by your approval and that of the other branches of the Legislature, in accordance with the decided opinions and loudly expressed feelings of the community at large. The encouraging advice of the great men whom I have named, but still more the recollection of the success that has ultimately attended efforts once deemed hopeless, bears us up under the partial disappointments which occasionally afflict us; and inspires the zealous promoter of improvement in our legal system with the sanguine hope, that he may not have lived in vain, when he has arrived at the term of his natural course, and is about to render his great account, as one in whose removal mankind has lost a friend and no man got rid of an enemy.

My Lords, I move you to give this Bill a first reading, and to resolve as its foundation:—

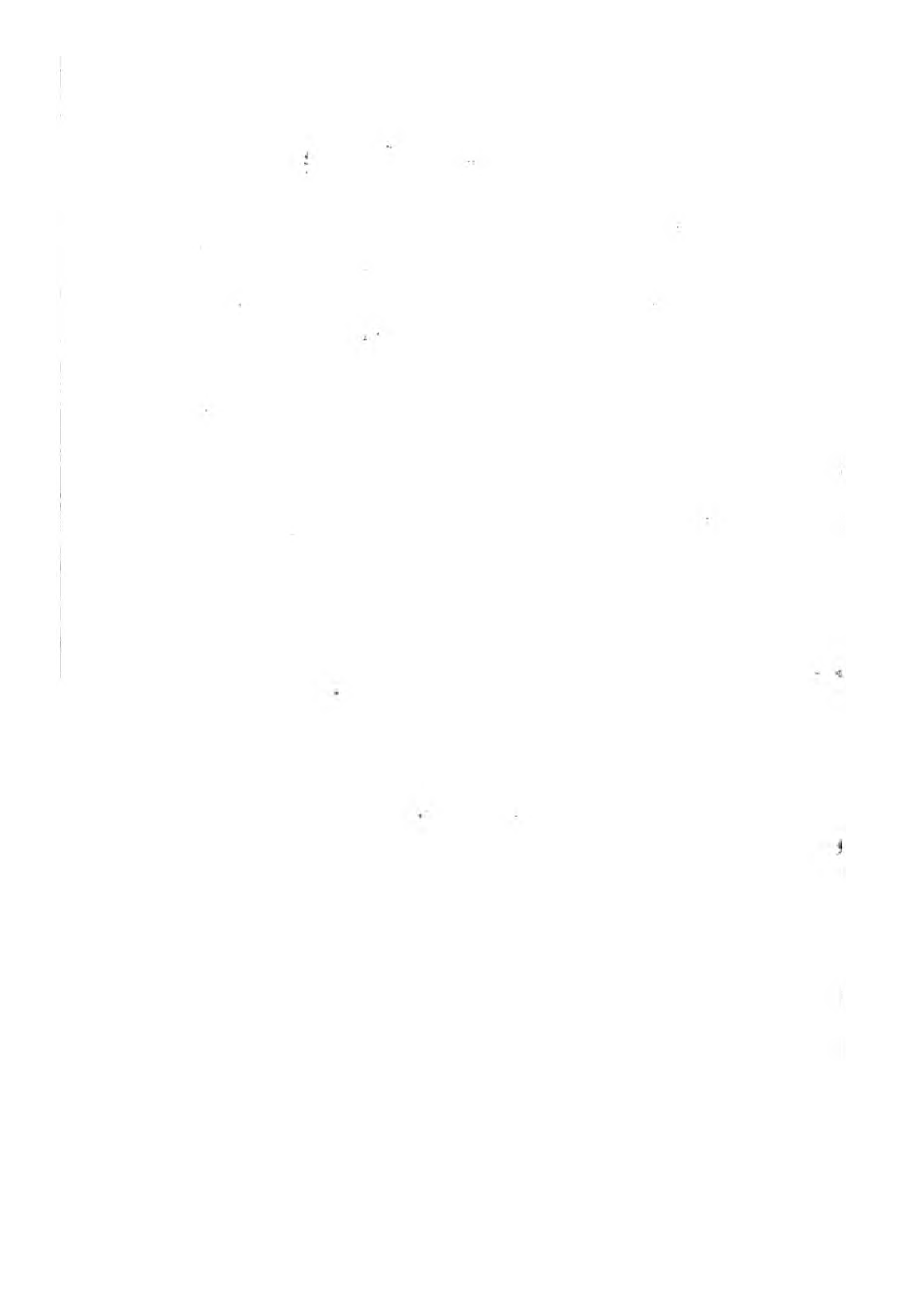
1. That the Laws affecting the Property of Married Women in this Country are imperfect and unjust, and operate with peculiar Severity on the Women of the Working Classes, and that such Laws urgently require Amendment:
2. That such an Amendment ought to be grounded on the Principle of allowing every Married Woman (in the Absence of any Settlement or Contract), to deal with her Property and Earnings, and compelling her to meet her own Liabilities, as if she were a Feme sole:
3. That while the Incapacities of Married Women

continue as at present by Law constituted, it is fit that they should be enabled, by Application to Courts of easy Access, to obtain Protection for their Earnings from the Claims of their Husbands or their Husbands' Creditors.

The debate on the resolutions was adjourned ; and the " Bill to amend the Law with respect to the Property of Married Women " was read a first time.

**THE END.**





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