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REMARKS
UPON
THE LAW
OF
MARRIAGE AND DIVORCE;

SUGGESTED BY
THE HON. MRS. NORTON'S LETTER
TO THE QUEEN.

δεινὴ γὰρ οὗτοι ῥαδίως γε συμβαλῶν
ἔχθραν τις αὐτῇ καλλίνικον ᾔσεται.

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REMARKS, &c.

WE read in the enchanting pages of Ariosto, that, in the days of chivalry, gentle ladies of transcendent beauty, adorned with all the softness and delicacy so exquisitely described by his magic pen, were also favoured by nature with masculine strength and undaunted courage. When their own wrongs or those of their sex called for redress, they flew to arms, and encountered in equal fight the most renowned and doughty champions.

Mrs. Norton has revived the memory and equalled the exploits of these charming yet formidable heroines. Mounted, like Bradamante, upon a courser of ætherial breed, and armed with a lance of gold, she has charged and overthrown those Rodomonts and Sacripants of modern days, commonly known to fame as the Law Lords. The cause of the quarrel was this:—These huge and mighty Giants of the Law have long maintained and upheld (compelled, as they say, by some oath that they have taken) an ancient but most ne-

farious custom, by which all damsels travelling by a certain well-frequented road, (which few, except those immured in nunneries, can possibly avoid), are despoiled of their money, goods, and chattels, of their jewels and ornaments, nay even of their garments, and condemned to prison for life. A curious part of this custom is, that each of these unhappy creatures is allowed to select a Gaoler of her own, to whom she is handed over after the performance of a strange and somewhat ludicrous ceremony, and who then becomes the absolute master of her person* as well as of the property of which she has been plundered, and of all other property that may accrue to her during her imprisonment, and even of her earnings in prison. The Giants of the Law will compel her, by force if necessary, to obey her Gaoler, and they maintain that she is also bound to love and *honour* him, though he may be the most odious and the basest of mankind. However infamous may be his treatment of her—however horrible his cruelties to her or her children—though he may turn out to be a gamester, a sot, a brutally licentious profligate, a burglar, a highwayman, or an assassin, the Law Giants will scarcely ever permit her

* The rigid severity of the custody has been somewhat relaxed of late. "The old law," says Blackstone, "was so strict on this point, that if one's wife missed her way upon the road, it was not lawful for another man to take her into his house, unless she was benighted and in danger of being lost or drowned." There were *three* cases only in which a stranger was allowed to carry her behind him on horseback. —3 *Bl. Comm.*, p. 139.

to get rid of her tyrant altogether. So strict and unrelenting have they been in this respect, that during a long series of years, notwithstanding the sufferings and tortures of millions of their victims, not more than four* of these oppressed creatures have succeeded in procuring their entire deliverance. Any one of the Gaolers on the other hand—or to speak more correctly any one of them who is rich enough to pay the enormous sums† exacted by the hired Satellites of the Giants and by a band of sturdy Villeins, who swarm about their halls and courts, and levy contributions upon all who have business to transact there, can easily obtain permission from the Giants to turn away his prisoner and take a new one, who is handed over to him with her money, goods, and clothing, in the manner above-described; the same whimsical ceremony being again performed.

This change would, generally speaking, be a great blessing to the poor prisoner, though it very seldom happens that any considerable portion of the property of which she was rifled when put into prison is restored to her upon her discharge, were it not for a condition invariably insisted upon by the Law Giants upon these

* The names of these rare examples of good fortune will be found in the "First Report of Her Majesty's Commissioners upon the Law of Divorce," p. 15.

† Some notion (though I believe a very inadequate one) of the amount of these may be obtained from the "Report of the Royal Commissioners." The Satellites alone, it appears, receive thirty guineas a day,—more than the whole expense of a Scotch Divorce.

occasions. No Gaoler is allowed to turn away his prisoner, unless he can publicly, in the presence of the Law Giants, blacken and destroy her character for chastity. The Giants who, though anchorites in practice, are somewhat lax in theory as far as their own sex is concerned, maintain that the slightest deviation from chastity is absolutely unpardonable in one of these unfortunate prisoners, though a Gaoler may keep as many mistresses as he pleases without the slightest danger of losing his place. Every Gaoler, therefore, is perfectly aware that, in order to get rid of his old prisoner, and take possession of a new one, he has only—with the help of the Satellites and sturdy Villeins—to prove the former to be unchaste by the oaths of any witnesses that he can procure to swear stoutly in a Court held for that express purpose by the Giants, who take great interest in these examinations, and are very careful that the minutest details of the scenes described shall be vividly brought out, widely published, and accurately recorded. The emancipated captive is thus effectually and indelibly branded with lasting infamy at the moment of her deliverance, and the system of oppression works well and smoothly, and consistently throughout.

I must not omit to mention another branch of this custom, which, in spite of its peculiar wickedness and enormity, has always been stoutly upheld by the Giants of the Law, the greedy Satellites who surround them, and the sturdy Villeins who act as Squires to the Sa-

tellites, and pay them their hire, or, as they call it, their fees. This is called, in their strange jargon, an Action of Crim. Con., and may be described as follows :—Before a Gaoler who wishes to exchange his old prisoner for a new one is allowed to get rid of the former by destroying her character in the proceeding above-mentioned in the high Court of the Giants themselves, he is expected to lay the foundation by a preliminary sham or mock trial in an inferior court, which takes place between himself and some person of his own sex whom he selects for that purpose, and from all participation in which the prisoner, whose honour is at stake, is rigidly excluded. So strict are the Giants upon this last point—so far are they from permitting her to appear as a party to defend herself, that they will not even allow her to be examined as a witness, and have very lately made a most curious decree to that effect.* The alleged ground of this sham action is, that the man whom the Gaoler selects for this purpose has seduced and debauched the prisoner, the sole property of the Gaoler, who is consequently entitled to large damages for the invasion of his rights. If the selected man thinks proper to deny this assertion

* By the Stat. 16 and 17, Vic. c. 83, it is enacted—“That a Wife shall be competent and compellable to give evidence for or against her Husband, in all civil actions, except proceedings instituted in consequence of Adultery.” *i. e.*, except proceedings in which her social existence is at stake. Here is a stroke of ingenuity! one is almost tempted to ask our Legislators, in the words of Molière,—“Avez-vous faits ce coup sans vous donner au diable?”

(a matter which he determines for himself, without even consulting the unhappy person against whom the proceeding is really directed), the question of this woman's guilt or innocence is gravely discussed in her absence, and frequently without her knowledge, by the hired Satellites of her Gaoler and the man whom he has chosen to debate this matter with him, before a Tribunal usually comprised of one of the Law Giants and twelve Jurors (generally Gaolers themselves), specially selected for the purpose.

It appears almost incredible, but nevertheless frequently happens, that the hired Satellites on both sides of the question are *instructed* (as they call it) to abuse the poor absent prisoner most unmercifully; those of the Gaoler contending that she has been reduced by his antagonist to the lowest pitch of degradation, that her value as a piece of property is gone, and that nothing can repair his injured honour and heal his wounded feelings but an enormous sum of money in the shape of damages; whilst the Satellites of his antagonist urge with still greater vehemence that, though true it is that she is now the most abandoned and degraded of her sex, it is equally certain that she was so long before their client knew her, that in reality she was not the seduced but the seducer, that he is to be pitied rather than blamed, and that he ought rather to receive damages than pay them. The Satellites on both sides are allowed to bring forward any witnesses that the sturdy Villeins can rake up in any

quarter against her, frequently the spies, and even the turnkeys of her Gaoler, and to produce any letter which any person, however unworthy of credit, will swear he believes to have been written by her, and this, as I have said before, when she is prohibited from taking any part in the proceedings, even as a witness, and has not even notice of the time and place where this detestable drama of iniquity is to be acted. The presiding Giant ultimately sums up what he is pleased to call the evidence, and asks the Specially selected Jurors, with a complacent smile, to make the case their own, and to say as Englishmen and as Gaolers, what they think would be the proper compensation for the loss of such a prisoner.*

This is the form of this shocking proceeding when the real or pretended Paramour denies the common guilt. But suppose that he refuses or neglects to do so—if the lady is young and beautiful he may be vain of such an imputation—there are unhappily such minds—he may be in collusion with a ruffian Gaoler—such villains have existed—he may remain passive from timidity, from poverty, from indolence, or from caprice. Surely then, in such a case as this, the Giants who, hard-hearted as they appear, are by no

* It sometimes happens, even upon such a trial as this, that the innocence of the accused is providentially made manifest, and as the Satellites say, the plaintiff's case *breaks down*. Is there no redress then for the calumniated? No punishment for the calumniator? Westminster Hall answers—None!

means cruel or ill-natured in matters unconnected with this Custom, will allow the poor woman to appear and defend herself, at all events they will do so if she protests her innocence, and prays not to be condemned without a trial. Alas! they will not do this. On the contrary, they hold that the guilty intercourse, if not denied by the party against whom the action is brought, within a time fixed by their rules, must be taken as conclusively established. What they call "Judgment by Default" is signed, a Jury is summoned to assess the damages, the hired Satellites on both sides declaim upon the assumption of the Lady's guilt being clear and undisputed, her value is assessed, like that of a horse or a dog, in her absence, and without any consciousness on her part of what is going on, her Gaoler pockets the amount, the noisy Satellites receive their Fees, and another woman is utterly ruined, and consigned to disgrace and infamy, unheard and unpitied.*

* It is impossible not to admire the *näiveté* of the following passage in the "Report of the Royal Commissioners," p. 18, note 9:—

"In the majority of actions which are brought against adulterers, judgment is allowed to go by default. This admits the defendant's guilt; and it only remains for the plaintiff shortly to prove the facts before the sheriff and a common jury, when damages are assessed as of course. In these cases it usually happens that no counsel appears for the defendant. The facts, therefore, sworn to, are admitted without enquiry; the witnesses are subject to no cross-examination; the cause is heard *ex parte*. What security against fraud is afforded by such a proceeding? If the parties are anxious to collude, what is to prevent the plaintiff from receiving the damages with his right hand, and then, as soon as the Bill of Divorce has passed, returning them with his left? It is obvious that an action so conducted, and a verdict so obtained, are

What, says some "Barbarian," some "Cossack," some "miserable Russian Serf," do you really mean to assert that there is any law or custom now in force in England which sanctions or even tolerates such horrors as these? Yes! I do mean to assert this, and, what is more, I venture to express a decided opinion that not one of the Giants of the Law, or of their Satellites, bold and confident as they are, will dare to contradict my assertion. There, then, "Barbarian," there, "Cossack," there, "miserable Russian Serf," go back to your Czar, and present to him this specimen of "the moral force of liberal institutions," of "the inconceivable blessing of living under just and humane laws," and of "the wonderful progress of modern civilization in really Christian countries," present to him this specimen, and advise him to submit at once, and contend no longer against a nation where freedom and justice reign, and cruelty and oppression are unheard of.

But to return to my Heroine Our modern Bradamant has registered in heaven a vow to put an end to and abrogate this atrocious custom in all its branches (including the flagitious Crim. Con. Action), has made a brilliant and successful onslaught upon the Rodomonts and Sacripants who uphold it ;

utterly undeserving of reliance or attention, in considering the merits of a Divorce Bill."

How has this *obvious* conclusion been so long in struggling into light ?

has hurled them headlong from their high horses, and laid them prostrate in the dust. But though shaken, and I hope, somewhat humbled, they are not disabled by the fall. They are not only strong and large of limb, but they are also so securely armed in their scaly mail of inveterate legal prejudice, that the lance of gold, though wielded by a powerful as well as beautiful arm, cannot penetrate into any vital part. They have, moreover, the hired satellites and the rabble rout of sturdy Villeins at their beck and call, ready to back them in all their enterprizes; and they can count, as a matter of course, upon the support of all the unprincipled, cruel, and sordid among the Gaolers. It is time, therefore, for all good Knights to hasten to the rescue of this gallant Lady, upon whom I fear the Giants are about to rush, refreshed, not by wine, but by copious draughts from the turbid and bitter fountain of the English Common Law. With all the strength we can muster in her aid, the task she has undertaken is so arduous as to be almost desperate—many fierce battles must be fought, many deadly wounds given and received, before her glorious labours are accomplished. But what are the toil and the danger compared with the honour of fighting in such a cause and under such a leader.—

Ἰὸμεν, ἢε τῷ εὖχος ὀρέζομεν, ἢε τις ἡμῖν.

Before the combat actually commences, it will be proper to be upon our guard against the arts of our

adversaries, who are subtle and crafty as well as strong. If they find themselves hard pressed, they will probably propose to enter into negotiation, and will cunningly offer us a slight modification of the infamous custom as far as the imprisonment is concerned, promising to release a few more of the damsels occasionally from time to time in (what they will call) special, or aggravated, or extraordinary circumstances, that is to say, circumstances extremely unlikely to happen. This they will represent as a great concession entitling them to maintain the robbing and plundering part of the custom in full force and effect. In making this occasional sacrifice of the person of one of their victims, without refunding the property of which they have stripped her, they will no doubt justify themselves by the example of the renowned Knight, Sir Hudibras, who has a *most able dictum* (as they would term it) expressly in point,—

“ But ’tis your better part, your Riches,
That my enamoured heart bewitches—
Let me your Fortune but possess,
And settle your Person as you please—
Or, make it over in trust to th’ Devil,
You’ll find me reasonable and civil.”

It must be admitted, that this doctrine, though not exactly perfect, is yet far preferable to the custom of the Law Giants, which insists upon keeping full and absolute possession not only of the fortune but of the person of the struggling and reluctant victim.

Still we must not admit it for a moment as a matter of principle. As a matter of necessity I fear it will force itself upon us in the cases of many distressed captives now in confinement, whose property has been squandered by their Caitiff Gaolers at the gaming-table, or upon their horses, dogs, and mistresses. In these cases we may possibly content ourselves with the complete and unconditional liberation of the captive—but for the future, we will not endure either spoliation of property or incarceration of person.

To shew what subtle spirits these Giants are, and how careful we must be not to be tricked and cheated by them, I must mention that though they almost alone maintain this custom, to which they could give a death blow in a moment by one of their edicts, they sometimes indulge in the odd fancy (when talking with each other in their great Hall) of abusing and speaking ill of it, affecting to feel compassion for its victims. One has been heard to say that the Law stripping the prisoners of their clothes and prison earnings is "harsh and cruel;" another has called the infamous Crim. Con. Action "a public scandal, a mockery of justice, a national disgrace;" while a third has, with more truth than discretion, described the proceedings of the Giants themselves, in their own Court to be "demoralizing and disgusting." It is pretty clear, therefore, that we must put very little trust in the words and professions of these mighty men of wisdom. We must insist upon a "material guarantee;" and if

we should be driven at last into a negociation with them, we must be very careful to select a plenipotentiary who will not be gulled and duped by empty phrases and promises, mixed with a little ingenious flattery. Our best course probably will be to employ some eminent member of the Peace Society, upon whose implacable and inexhaustible pugnacity we may safely rely.

I will now proceed to a little further discussion of these subjects, henceforth calling my gaoler and his prisoner by their real names of husband and wife. I say a *little* discussion, as the time that I am able to devote to it is very short indeed. But the matter presses. Mrs. Norton's admirable Letter to the Queen has roused the attention of the public to these questions, which are in themselves of immense importance. I have some observations to offer both upon the Report of her Majesty's Commissioners, and upon the Bill of the Lord Chancellor, in support of the clear and sagacious view taken by Mrs. Norton of those two productions, which appear to me, I deeply regret to say, to fall very far short of what is required by justice. by morality, and by public policy. I would rather offer these observations in their present imperfect form, than delay them until it is too late.

But first a word as to the Marriage Law as regards property. Let us suppose a young gentleman to marry a young lady who is the absolute possessor of a landed estate, well stocked with sheep and oxen,

and of a substantial house with old Sevres and Dresden china in abundance, costly furniture, a splendid piano, and a delicious wardrobe and Trousseau. The confiding parties make no settlement, but trust to the Law of England to regulate their respective rights. The instant the Clergyman has concluded his task, the sheep and oxen, the old Sevres and Dresden, the piano, the furniture, and the Trousseau, fly as if by magic over to the bridegroom, who, if he has a customer ready, may sell them all before he sits down to the wedding breakfast, notwithstanding the tears and protestations of his bride. Good gracious!—say the ladies—and can he also sell the landed estate and the house? No—dear ladies—no. Things, bad as they are, are not quite so bad as that. He may take all the profits of them to be sure, as long as the young lady lives, but they are not his own absolute property, like the sheep and oxen and the Trousseau. The young lady holds them still; and if she should happen to die without children, the land and house will go to her heirs, just as if she had not married at all, and the disconsolate widower must retire with lingering steps and slow.

The prosperous Roman was reminded by his friend Horace, in the simple language of nature (too low and vulgar for our modern *civilized* poets) that though he sacrificed three hecatombs a day, he must leave his “land and house and pleasing wife” at last. The case of our Englishman is the converse of this;

the *placens uxor* is torn from him, and the *tellus et domus* fly away after her.

If, however, she present him with a baby, our Law has made a most beautiful arrangement. The instant the child is heard to cry,* as our great lawyers tell us, a miracle is effected—the happy father views the house and land with different eyes—he is now, to use the admirable language of our law, “Tenant by the Curtesy of England inchoate”; and if the mother and baby expire together the very next moment, his agony of grief may be somewhat soothed by the reflection that he is the absolute owner of the land and house for the remainder of his own life, with the proud title of “Tenant by the Curtesy of England Consummate.” Still, however, his dominion is not quite complete, and he cannot sell, or pawn, or give them away, as he could the sheep and oxen, and the furniture, and the dresses, and the pretty little kid gloves and brodequins. There, ladies, there is a sensible Law for you—there is the perfection of human, or rather of masculine wisdom. Well! but stop; you seem to be a Lawyer—do tell us why

* There is some discussion amongst our oracles, whether this cry is a *sine qua non*, or, whether, in its absence, other evidence of vitality is admissible. The latter seems to be the better opinion; but all are agreed that if the mother dies before the child is born, and the Cæsarian operation is successfully performed, the husband loses his Curtesy, as the child has already got the land and house in his mother's womb, and cannot decently be called upon to give them up again, when he makes his entry into the world.

we are to be deprived of our piano and gloves and brodequins, whether we have a baby or not, to lose, the Lord knows how much, of our land and house, if we have a baby, and to keep it all if we have no baby. Alas! ladies, I am unable to answer that question. We do not know why this Law was made, by whom it was made, or when it was made, but we know that we ought to be extremely proud of it, as we are told by one of our great Lawyers that it is peculiar to England and Scotland (where, I may observe, it seems to be in great favour) nothing of the sort ever having been thought of in any other country. It is true that this last assertion is positively denied by many other equally great Lawyers, who declare that the Curtesy in question is by no means confined to England and Scotland, but that it has prevailed pretty extensively in barbarous times and among barbarous nations. They seem all to agree, however, that it may be justified upon *feudal* principles, and this of itself is of course a conclusive reason for preserving it at the present day; and, besides, every one I am sure must see the propriety of encouraging and animating husbands, whose wives are seized of lands *in fee simple or fee tail*.

What queer expressions! well, never mind the Curtesy for the present, but tell us the reason why we lose our sheep and oxen, and keep the land upon which they graze, surely you cannot be so stupid as not to be able to explain that. No; I am happy to

say that I can make that clear in a moment, and shew the wisdom of the law beyond all cavils. The land is real property, and your rights in that depend, as I observed before, upon feudal principles, which (thank God!) still continue to flourish in this chivalrous country. The oxen and sheep, on the other hand, are only personalty, and are attached to your charming person, by another excellent rule of our Law, wherever you go. But by the mere performance of the marriage ceremony you, as you are well aware, instantly become one person with your husband—it follows then that the sheep and oxen are also attached to your husband's person, and that consequently he must, as personal property passes by delivery upon a consideration, or even without a consideration, have a right to sell or pawn, or even give them away if he thinks proper. Yes, says the young lady, I can understand that, and of course, as our persons are one and the same, his horses and dogs are attached to my person in the same way, and I can deal with them, or with his guns, pistols, pipes, and segars, just as he can deal with my sheep, oxen, muffs, fans and bracelets. So one should have supposed certainly, but our Law ordains exactly the reverse, and the great Blackstone says that “the very being or legal existence of the wife is suspended during the marriage, or at least incorporated and consolidated with that of the husband,” and I am sorry to say that nothing is more certain than that, whether *suspended* or *incor-*

porated and *consolidated*, your lovely person vanishes entirely, and that you lose by this mystic union all your own personal property, and acquire not the slightest interest in that of your husband. Well, I declare, I never heard such shocking stuff before ; I am out of patience with such nonsense. No wonder, dear lady, and I am out of patience too—but my duty compels me to go a little further yet in spite of weariness and disgust—though I advise you to stop here, as what I am about to say would, I fear, seriously alarm and shock you.

I will now, by way of illustration, state three* cases of the operation of this Law. They are by no means of uncommon occurrence—they have happened, are happening, and I fear will continue to happen for some time longer—but I feel it right to record them in the hope that they may induce some persons to reflect upon this subject who have not reflected upon it before. A widow with a small personal property and three young children, was induced by a scoundrel, lurking under the garb of a preacher, to marry him without a settlement. He then threw

* I give in an Appendix a fourth example supplied by the ever-vigilant Lord Brougham, whose biting axe has hewed down so many abuses, in his evidence before the Committee of the House of Lords, in March, 1844. These instances might be multiplied to a vast extent—can it be that they are unworthy of attention because they are drawn from the history of the middle and lower classes, who are too humble for the luxury of settlements, and trust to the protection of the Law.

off the mask, treated her and her children most scandalously, and indulged in the most disgraceful drunkenness and debauchery. Still, his career was so short, that when he sank under his excesses, the little property was not seriously impaired, and the poor woman, though again in a state of pregnancy, was not in actual despair. In a few days she was driven to madness, when she discovered that this man, shortly after the marriage, had made a will by which he had bequeathed her little all to an illegitimate child of his own.

In the second case, the only child of a man of some little property married against his consent a young man of indifferent character, whom she fondly hoped to reclaim. This hope was vain. He became the associate of thieves and ruffians, and committed many desperate acts. Her father died one day very suddenly without making any will or settlement of his property, and very shortly after the husband, in a moment of drunken fury, committed a felonious assault upon his unhappy wife. He was tried and convicted of the felony, and the property of the wretched wife, which upon its descending to her, was instantly transferred by the law to him, became forfeited to the Crown by reason of a felony of which she was not the perpetrator, but the victim.

In the beautiful Opera of the *Gazza Ladra*, when the weeping Ninetta, falsely accused of theft, draws out her handkerchief to dry her tears, there drop

from it upon the stage the two pieces of money destined for her fugitive father, which are instantly seized by the cruel and profligate magistrate in the name of the Treasury, amidst the horror and disgust of the audience. That horror and disgust are natural and just; but what would be the indignation excited by the representation of an iniquity like this, where the law deprives an unfortunate woman and her children of their patrimony, because the husband from whom she had a right to demand protection, has barbarously trampled upon, wounded, and assailed her.*

In the third case, the husband of a very industrious and decent woman, who had borne him several children, was convicted of the horrible offence of assaulting with intent to ravish one of his daughters, a child of ten years old, and was sent to prison for three years. The heart-broken wife and mother found some friends in her distress, who advised and assisted her to remove to a distant part of the country, and there under an assumed name to shelter herself, if possible, from all further intercourse with her dæmon husband, when the law should again turn him loose upon his miserable family. In this re-

* It will be asked, will not the Crown restore the property in such a case? I hope and trust the Crown will, but I am by no means sure of it, and I know that if the nature of the property is such as to require the issuing of a Commission of Escheat, the expences of that proceeding will cut a "monstrous cante" out of the forfeited estate.

tirement, by great industry, and the kind aid of her benefactors, she contrived to earn a decent subsistence, and even to lay by some of the surplus of her little earnings. In vain. One fatal evening, as the shades of night are descending, a well known diabolical countenance is seen at the window of her peaceful cottage inflamed with drink, and lust, and cruelty. The monster comes to claim his marital rights over her earnings and her person—he comes in the name of the English Law, and who shall resist or gainsay him?

Justice, Equity, Religion, Virtue! Vain names by which we are abused and cheated! Sermons fly around us like hail, religious reviews and pious tracts strew our table thick as autumnal leaves in the brooks of Vall'ombrosa—home, foreign, and colonial missionaries impede our progress in the streets, and invade the privacy of our houses—we have penitentiaries and reformatories, for male and female, for adult and juvenile offenders—nay, we have a Society for the reformation of the Law, the members of which meet at an Annual White Bait Dinner (God! grant me patience!) to magnify their own exploits, and degrade each other with fulsome praise. We have all these things, and yet we leave abuses and enormities such as I have feebly endeavoured to describe, untouched and almost unnoticed. The cries of their victims are lost in the storm of hypocritical and inglorious boasting which

rages through the land, and fills with bitterness, while it depresses with humiliation, the heart of every real friend to his country.

I will now proceed to the consideration of the Report of her Majesty's Commissioners and of the Bill of the Lord Chancellor, founded almost entirely upon the recommendations contained in that Report. I shall approach these Lords and Gentlemen with all due deference, and assuredly in no hostile spirit—they are, indeed, very eminent men—they may be truly called "*Ductores Danaum, delecti, prima virorum.*" But if I am to discuss their conclusions and reasonings with any credit to myself, or with any advantage to the public, I must discuss them as freely and unreservedly as if they proceeded from the same number of Attorneys' Clerks. I must not show any mercy to arguments, which appear to me to be fallacious, because Lord Campbell is a great lawyer, and a most eloquent speaker and writer; because Dr. Lushington is a learned civilian, an accomplished scholar and a delightful companion; because Mr. Walpole, Mr. Bouverie, and Sir W. P. Wood are admired and loved by all who know them. No; in thanking them for the services they have rendered to the Queen and her subjects by their Report, I shall be compelled to point out what I consider to be its defects and omissions, and I have not the slightest fear of offending by so doing any of those enlightened and judicious persons.

There is another Commissioner, a noble Lord most highly esteemed and respected, who differs from his colleagues, and has consequently made a separate Report. I think it will be more convenient to dismiss this at once—it is founded upon the extreme opinion, which I confess I had supposed to have been abandoned by all* reasonable men and women, that a complete divorce enabling the parties to marry again, ought not to be permitted in any circumstances whatsoever; and that if Messalina herself were to re-appear in our days, her Claudius, though not forced to receive the “meretrix Augusta” with open arms, when she “lupanaris tulit ad pulvinar odorem,” still ought not to be allowed the consolation of replacing her by a chaster, if not a fairer companion. The religious Text, upon which this extravagant doctrine principally rests, appears about as conclusive as those which consigned the great Galileo to a dungeon, and has, moreover, as the noble Commissioner himself very fairly and

* I am speaking here of Protestants only. The *reason* of the Catholics tells *them* that it is right to submit to the authority of the Church, in this as in other matters; and I have no more right to complain of their so doing, than I have of their fasting, while I am eating roast beef and plum pudding.

The Code Napoleon, composed for a Catholic country, was a most remarkable exception—it not only admitted of divorce for adultery, but for many other causes, and contained some excellent provisions by which I think our Commissioners might have profited more than they have done. When the Bourbons were firmly (as they thought) re-established in 1816, they repealed this part of the Code Napoleon and restored the Code Redesdale, “*Sic omnia fatis in pejus ruere, et retro sublapsa referri!*”

candidly admits, been “interpreted differently by many learned and holy men.” As to the moral and social grounds, as they are called, I cannot allow that name to pure assumptions, entirely contradicted by common sense, by the experience of all protestant countries, and in direct opposition to the evidence respecting our friends in Scotland, which the Commissioners have printed with their Report. The revival of the Dogma that Marriage is a Sacrament, so long exploded in this country, may excite astonishment, but it can scarcely call for refutation. If her Majesty were to issue a Commission to enquire into the causes of the present decay of classical learning in our Universities, and into the possibility of securing, by Act of Parliament or otherwise, a constant supply of Bentleys and Porsons, it might happen that one of the many noble Lords who would be placed upon the Commission should report that the reputation of those great men was usurped, that Bentley was a dunce, and the Epistles of Phalaris undoubtedly genuine. It is not very probable that the expression of such an opinion, even by a noble Commissioner, would provoke a revival of that celebrated controversy. It is far more likely that the Queen and the Public would decline altogether any discussion upon such a point, and would say, as I will venture to say now, borrowing (I hope without offence) the language of Cromwell upon a memorable occasion—“Lord Redesdale, Lord Redesdale, the Lord deliver me from Lord Redesdale!”

With respect to the other Lords and Gentlemen, I have already said that I had to thank them for a service they had performed for us, and I am anxious to acquit myself of this obligation as soon as possible, as it is an agreeable, I am sorry to say, almost the only agreeable part of the ungracious duty which I have undertaken, too rashly I fear, to perform. I thank them, then, sincerely and heartily, in the name of the public, for the three following recommendations:—

That the existing mode of obtaining a divorce a vinculo shall no longer be continued.

That a verdict at law and an Ecclesiastical sentence shall not be considered as preliminary conditions to be complied with before it can be obtained.

That a new tribunal shall be constituted to try all questions of divorce.

Here then we get, at any rate, the admission of a principle, viz., that a complete and entire divorce ought in some cases to be allowed, and that it ought to be made by the judgment of a Court of Law, not by an arbitrary and capricious edict of the Legislature, in violation of all law. The detestable Crim. Con. Action (*though not abolished*, observe) is no longer to be a necessary preliminary. So far, then, what we have got is good. Well, it will be said, and is not what follows good also? Have you no thanks for the establishment of a new tribunal to try *all questions of divorce* and all other minor matrimo-

nial questions, and to consist of a Vice Chancellor, a Common Law Judge, and a Judge of the Ecclesiastical Courts, with *an Appeal to the House of Lords?* Do you feel no gratitude for this recommendation? No! for this I feel something exactly the reverse of gratitude, accompanied by indignation and astonishment. What, one Court only for all England, to sit in London, and to be formed of Judges belonging to other Courts, which already engage and occupy their whole time and attention. This will be a valuable Court indeed, particularly as its process, practice, and pleading are to conform to the process, practice, and pleading of the Court of Chancery, *as recently improved*. I was not aware that any of *the recent improvements* in that practice were such as to facilitate an enquiry into the fact of *adultery*, which, according to another recommendation of our Commissioners, is to be the only ground of divorce. But let that pass. From this solitary Court, composed of Judges whose sworn duties will be continually calling them elsewhere, and tied down to the process of the Court of Chancery (so justly feared and detested by the people), there is to be an Appeal to the House of Lords, sitting only a small portion of the year, already overwhelmed with business, and dilatory and expensive enough to appal the stoutest suitor.

To present a cup of water with one hand to a person tortured by thirst, and to dash it from his lips

with the other, may be a fit employment for demons punishing the crimes of a perfidious tyrant, but it is not an example to be followed by Lords and Gentlemen called upon by their Queen to advise her how she may best do justice to her people. An Appeal to the House of Lords! Why? upon what grounds? Is it one of their privileges to decide, *en dernier ressort*, upon all questions where anything indelicate, obscene, or prurient is likely to arise? or have they, by intuition or otherwise, so great an aptitude for the decision of such matters, that even a Vice Chancellor and two grave Judges cannot be trusted without their supreme control. When Domitian hesitated as to the proper mode of dishing up a turbot of enormous size, he called his House of Lords to his assistance—"Vocantur ergo in Concilium Proceres"—and one of these noblemen, of the name of Montanus, is said to have been so accomplished a gastronome that he could distinguish at the very first taste Lucrine from Ruptian oysters, and could tell at a single glance upon what coast a craw-fish had been caught. We are told that he acquired this knowledge from great practice, from the "usus edendi." It cannot be in this mode, by dint of experience, by dint of constant practice, I hope and believe, that our Proceres have rendered themselves, according to the Commissioners, such excellent, such paramount connoisseurs, indeed the sole competent Judges in Cases of Adultery. I think, however, we have a right to insist upon knowing

whence this peculiar aptitude proceeds, if our Proceres really possess it, and if they do not, why the people of England, thirsting for cheap and speedy justice, are first to be condemned to toil and struggle for years in the single Court prepared for them, and then, as they are emerging from it exhausted and half ruined, but cheered by the hope that their troubles are at an end, to be seized and plunged into this Serbo-nian Bog, where, from time immemorial, whole armies of litigants have been swallowed up.

What a strange, what an incomprehensible people we English are? Our great experiment of placing the law within the reach of the public at large, by means of the County Courts, has succeeded completely, in spite of the most dismal forebodings. The only fault that is now found with it is, that owing to unnecessary *costs* and *appeals*, the broad and open road which ought to lead to the seat of Justice is still somewhat contracted and encumbered. Yet now we have eminent men, who took part in the prolonged and desperate struggle which was required to obtain this national blessing, proposing a system of delay, and expense, and vexation, far worse than that in the destruction of which they have spent the best years of their useful and honourable lives. All that remains for me is to ask them a question, to which, if they should make a Supplementary Report, and condescend to notice my humble efforts, I shall hope to receive an answer. Did they believe that the Tribunal and

Appeal which they proposed would really be accessible *to the poor*, who form the large majority of their fellow-subjects, and afford them easy, speedy, cheap, and substantial justice—or did they believe the contrary, and deliberately frame their recommendation accordingly? In the first case I shall have to express my regret, mistakenly I hope, at the deplorable infatuation which has misled them; in the second I shall be silent, as my feelings, again I hope mistakenly, would compel me to adopt a tone and language inconsistent with the respect and regard which I most unfeignedly feel for them.

I should have doubted whether the “infirmity of noble minds” could be carried further, but a sight of the Lord Chancellor’s Bill made all doubt upon the subject impossible. The 8th Section of that Bill was as follows:—“The Lord Chancellor, the Lord Chief Justice of the Queen’s Bench, the Master of the Rolls, and such two other Persons as her Majesty may from time to time appoint by Letters Patent under the Great Seal, *or any three or more of them, of whom the Lord Chancellor and the Lord Chief Justice of the Queen’s Bench shall always be two*, shall constitute a Court to be called the Court of Divorce.” So that, according to this Bill, this new Court, established for the purpose of administering, alone and unassisted, justice to the whole people of England in a matter of vital importance, is never to sit at all, unless both the Lord Chancellor and the

Chief Justice can, at one and the same moment, desert and abandon their proper posts, and the sacred duties which they have sworn to perform.* Is this to take place often? or is it to be of rare occurrence? Are the old suitors or the new ones to be the victims? It is impossible to say which of these alternatives would be the more disgraceful and disastrous. Yes, it will be said, but of course the Lord Chancellor, having dragged the two most important legal members of the House of Lords to preside in his new tribunal, has not thought it necessary to give the appeal to which you so strongly object. Would to Heaven it were so; but by the 30th Section of the Bill, the deadly and blighting appeal (an appeal from these Lords to themselves and two or three others) is still retained, with the addition (upon which I shall not trust myself to comment) that the House, if it shall think fit, may remit the case to the Court of Divorce to be heard over again, after which that Court is to *make a second decree, subject, of course, to a second appeal*. Can I really be in full possession of my waking faculties? or is it not rather some *ὄϊλος ὄνειρος*, some mischievous and delusive dream, which is pre-

* The observations of Lord St. Leonards in the House of Lords upon this mockery of a Court, as well as upon the vile Crim. Con. Action, which he terms "a disgrace to the country and to civilization, an action which shocks one's sense," are highly creditable to that distinguished nobleman, and deserve the gratitude of the country.—*Hansard, vol. 200, p. 23.*

senting to my bewildered senses this rude and undigested chaos of absurdity and confusion ?

It would seem to be of little moment *what* the law is which is to be so administered, yet I will not entirely pass that over, in hopes that, upon the subject of the new tribunal, our rulers may relent, or may yield to the public indignation. The Proposal of the Commissioners upon this head (adopted by the Chancellor in his Bill), is to give the husband a divorce enabling him to marry again on the ground of simple adultery committed by the wife, but to give the wife a similar divorce only when the adultery of the husband is accompanied by incest or bigamy.* With the first

* One of the Commissioners at least seems formerly to have held a different opinion, and that a pretty strong one, upon this subject. I find in an excellent speech delivered in the House of Commons by Dr. Lushington, in the year 1830, the following striking passage, "A still greater objection to the present law was, that whilst the injured husband was allowed the power of resorting to Parliament for relief, the same facilities were refused to the unoffending and equally injured wife, unless, indeed, in those horrible cases in which an incestuous connection was proved to have taken place. Ever since he had an opportunity of considering this question, this anomaly had struck him, and he never could reconcile the principle *to justice or common sense*, by which the Legislature refused that relief to the wife which was granted to the husband. If there ought to be any distinction, or any greater favour shown to one party than to the other, it should be to the wife as the weaker party."

Was the learned Doctor criticising by anticipation his own Report, or have *justice and common sense* undergone a total change in the interval ?

Let me bestow in passing, a word of praise upon the admirable speech of Mr. C. W. Wynn in the same debate. He tells us what the great Lord Stowell really thought of that deplorable system, upon

part of this recommendation I presume that everybody, except Lord Redesdale, or perhaps the Bishop of Oxford, will agree—from the limitation imposed upon the right of the wife in the second part, I, in common with Mrs. Norton, and all friends of equal and impartial Law, must express my entire dissent

On what principles of justice or of policy is it founded? Even under our present wretched system, no such distinction exists in cases of Divorce à mensâ et toro, and the Commissioners approve of that practice, and propose to continue it. The Rule of the House of Lords, when arbitrarily and unconstitutionally trampling upon private rights by special legislation for the rich, has undoubtedly been not to grant a Divorce to the wife upon the ground of simple adultery by the husband; but even allowing such proceedings to be entitled to any notice at all, we luckily have the *reasons* for this Rule in the language of some noble and learned persons, the force of which I propose to discuss presently, and as far as authority goes, Lords Thurlow* and Eldon, I am happy to say, agree with Mrs. Norton and myself.

which his brilliant talents had for so many years shed a false and fleeting lustre.

* See a picture drawn by a master's hand of Lord Thurlow upon an occasion of this nature, in that delightful and instructive book, Lord Campbell's "Lives of the Chancellors."—Vol. 5, p. 479.

It would not be easy to say, whether the public or the private labours of our beloved and venerated Chief Justice are the more honourable to himself and the more useful to others.

Aye, say the Commissioners, but does not Dr. Johnson justly observe, "That the difference between the adultery of the husband and wife is (socially speaking) boundless." Well, he does so, and I agree with the dear old Doctor here, as I do in many of the other good sayings of his which are recorded, though I can scarcely suppose that a Commission, with a *Scotchman* at its head, will acquiesce implicitly in them *all*. Be it so—there *is* no doubt a great difference; but how does that prove that the smaller injury of the two (the adultery of the husband) is not sufficiently great to entitle the injured party to complete redress by regaining her entire liberty? Parricide is a more horrible crime than the murder of a stranger, but we do not on that account refuse to inflict the same punishment in the two cases. A horse is more valuable than a sheep; but the penalty for stealing them is the same. The difference between the forgery of a Power of Attorney, which overwhelms whole families with grief and ruin, and that of a cheque for £5, is also (socially speaking) boundless; but the law treats them exactly alike. A man who owes the sum of fifty thousand pounds and cannot pay it, is sent to prison; and so is a man who owes the sum of fifty pounds and cannot pay it. So that the attempt to crush us with the weight of the stout old Doctor's truism is not, I think, very likely to succeed.

The truth is, my Lords and Gentlemen, that by

your admission that simple adultery in the husband entitles the wife to a *Divorce à mensâ et toro*, you have pretty nearly settled the question. Let us take a case, not alas! from the pages of a novel, but from the sad drama of real life:—A disloyal Postumus, the ungrateful choice of a young and confiding Imogen, has done all that the depraved imagination of the vile Jachimo could invent, and more—he has introduced* his abject paramours into his house, has seated them at his table, and driven away with insults and reproaches its virtuous mistress. With such a miscreant, say you, this spotless creature shall dwell no longer, let her go her own way in peace! Let her do so, and may heaven preserve her! But will you condemn her to toil through the remainder of her dreary pilgrimage alone, without a guide, without a protector—must she bear until relieved by death, the opprobrious burthen of the detested name of her betrayer? Is she to witness the conjugal and maternal joys of the friends of her youth, married under a happier star, and lament in vain that they are lost to her for ever, by the baseness and cruelty of which she has been the victim? Is she to carry with her to the grave all the disabilities which the English law so unjustly imposes upon married

* We have a very early example of this mode of treating a wife, in the case of the mother of Phoenix, whose mode of obtaining redress, however, I cannot recommend to my injured countrywomen. Read, with delight, the story in the *Iliad*, and, indeed, the whole scene in the tent of Achilles, one of the finest productions of human genius.

women ? and to struggle on to the last unable to make a will, or to enter into a contract, or to sue for redress of injuries, in a state of helplessness very nearly approaching to civil death ? If this crying iniquity is to be deliberately established by law, we must have reasons for it of no doubtful nature, but clear and cogent, carrying conviction at once to the mind—whether those of the Commissioners and the Law Lords are of this description, I will now proceed to consider. The great, the irresistible argument is as follows :—

The Commissioners say “ should this be conceded, there is reason to apprehend that in many instances the husband would form a second connection, in order to get rid of the first.” Lord Brougham says “ Every man who desires to get rid of his wife has only to go and seek a mistress, and, *as the natural consequence of such conduct*, to desert his wife, and therefore he instantly drives her to an application for a divorce.” Well ! this would be shocking indeed ; but let us hope that the English are not quite so base and profligate as you suppose, because if this be true, we shall have under your own proposal a great many wives *forming second connections* in order to get rid of the first, and Lord Brougham’s husbands *have only to go* and commit incest or bigamy, which I am afraid, from his description of them, they would not much scruple to do.

No, no, says Lord Cranworth, here you make a very great mistake ; the consequences of exposure and

discovery in such a case to a woman are ruinous, whereas no man need care a farthing about them, such being the state of English morality, that he is merely considered *a little profligate* if he commits adultery only, whereas if he is guilty of incest or bigamy* in addition, he is considered about upon a par with a woman who is simply faithless. So that you see our Bill is in exact conformity with public opinion, and is very wise and consistent after all.† That is ingenious

* May I venture to ask, in the simplicity of ignorance, why *rape* is not added to this list. Has it been decided by the Judges or the House of Lords that a married man who commits a rape is not guilty of adultery? In the absence of any such ruling, my poor common sense would suggest that a woman whose husband is transported for so outrageous a violation of the marriage contract, might, without any serious danger to society, be allowed to take another.

† The words of his Lordship, as reported in Hansard, vol. 200, p. 7, are as follows:—"I do not propose, and the Commissioners have not recommended, that the wife should have the same relief on account of the adultery of the husband, that the husband has on account of the adultery of the wife. Now, *prima facie*, that seems a very unjust distinction; but observe what the want of it would lead to. If adultery on the part of the husband is to entitle him to a divorce, inasmuch as the husband—which may be bad morality, but it is the fact—suffers little on that account in the opinion of the world at large; for it is notorious, that whilst the wife who commits adultery loses her station in society, the same punishment is not awarded to the husband, who commits the same crime; he may, without any great sacrifice on his own part, but by merely *being a little profligate, and multiplying his acts of adultery*, be able to effect his object."

Lord Cranworth has as sound a judgment and as ardent a love of justice as any man living. Why does he, in the present instance, allow these great qualities to be overpowered by imaginary difficulties, and "cabined, cribbed, confined, bound in to saucy doubts, and fears?"

I have to apologise for marking with italics one or two passages.

certainly, and if the account which the keeper of the Queen's conscience gives of the morality of Her Majesty's subjects be correct (of which I, being quite a novice in such matters, do not pretend to be a judge), it may possibly be generally considered satisfactory by the English. How it may be received *by the Scotch* seems more doubtful, as unless it is a mere frivolous and baseless assumption, they must be "*forming second connections*" and "*going and seeking mistresses*" and "*multiplying acts of adultery*" at a tremendous rate, as they have had for centuries the very law which we want to have, and which these Lords refuse us on account of the great number of "*little profligates*" it will make among our husbands. It is true that the witnesses from Scotland, men of character, wisdom, and experience, give no countenance to this notion of our Lords, and appear astonished at the suggestion that there is more "*little profligacy*" on the North than on the South of the Tweed. Take courage, then, my Lords, let us try this experiment here, and if the result should be as terrible as you apprehend, we will pass a law, (giving of course *an Appeal to the House of Lords*), to make our wicked English husbands breakfast and dine on oat-cakes, and drink Glenlivet instead of Claret, whenever they are caught "*forming second connections*," a regimen which will speedily, I hope, tame them down to the level of their Scottish brethren.

Should this prescription unhappily not succeed, we

are by no means at the end of our resources. We have saur kraut, and schnapps, and pumpernickel brot, to fall back upon. We may administer the diet of Prussia, or of any of the other protestant German States. We may exhibit that of Holland, that of Denmark, or that of Sweden, since in all these kingdoms a divorce is granted to the wife on the ground of adultery by the husband, without, as far as I can ascertain, the slightest outbreak of "*little profligacy*" on the part of the lords of the creation.* Our pharmacopœia then, is almost inexhaustible, but I cannot help feeling confident that we shall not be driven to have recourse to it. Our Lords and Commissioners have,—I am sorry to be obliged to use the expression,—*libelled* their fellow-countrymen, who will not, I am convinced, should our law be assimilated to that of other protestant countries, rush to commit adultery *sur la place*, in order to drive their wives to

* Nothing can be more invidious or in worse taste than vague assertions as to the comparative morality of different nations, or of the same nation at different times. Still, if the Commissioners and Lords will insist upon our adopting their speculations upon such subjects as our guide in a great question of jurisprudence, we must test their validity as well as we can, and by such evidence as we can obtain. I hope then that our gallant, lively, and intelligent allies will not complain, if I ask, whether there has been any sensible diminution of conjugal infidelity in France, since the entire abolition of divorce? I shall leave the answer to their own eloquent and ingenious writers, to Balzac, to Eugène Sue, to George Sand, to Dumas père, and Dumas fils, and a legion of others.

sue for a divorce.* No, my Lords and Gentlemen, if they do indulge in that *peccadillo*, it will be neither more nor less than at present, and with the same object, the gratification of licentious passion. Your prophecies will turn out to be “sheer nonsense,” (the language is parliamentary), and it will not be necessary to interfere with the consumption of venison or of turtle, or to deprive, by the law which I have suggested, the Lord Mayor’s dinner of some of its brightest ornaments.

Well, but is this all you want? Will you be contented with this? Very nearly so, my Lords. I shall only ask one more trifling concession for the present, leaving many other grave matters connected with this subject for future discussion—but I cannot defer for a moment the duty of calling your attention to the case of a very pretty and virtuous young woman whose husband deserted her four or five years ago, carrying off everything he could lay his hands upon—she has never heard from him since, but has been told that three years ago he was living a most abandoned life in California, which, however, she is entirely unable to prove. Stop, stop, we have made ample provision for this case—the Commissioners recommend that she should have *either* a Divorce a mensâ et toro, or “an award of proper alimony for her maintenance.” That

* Should this state of things unfortunately occur, Lord Panmure would no doubt take advantage of it, and call out, like Lear, “To’t Luxury, pell-mell, for I lack Soldiers.” Considering the probable duration of the present war, such an exclamation would be no proof of insanity.

is kind and considerate of the Commissioners indeed—but as to the Divorce *a mensâ et toro*, she has evidently had that for five years already, and as to the “proper alimony,” it is believed that the rascal who has deserted her cannot be found, and it is hoped that, should he be discovered, it will be in gaol, the only proper place for him.

Besides, if I must confess all, this poor young woman’s wrongs and sorrows and beauty have touched the heart of a neighbouring farmer, who, if she could get a complete Divorce from this ruffian, would gladly make her his wife, and these good people have heard that in Scotland they would give her the Divorce she wants at once.* Are we never to hear the last of

* Our Lawyers, who admitted the validity of Scotch marriages without much difficulty, though solemnized between English crossing the border expressly to evade their own law, have been much puzzled and embarrassed in dealing with Scotch divorces. The question is, whether a marriage of English parties in England, who afterwards go to reside in Scotland, can be dissolved by the decree of a Scotch Tribunal founded upon Scotch Law (see the cases collected in Story’s “Conflict of Laws,” Sec. 215 and Seq). The law of Scotland appears to say clearly that it can be so dissolved; but whether the law of England will give full effect to such a Divorce here, by allowing the parties to come back and marry again is very doubtful indeed. I hope that this *conflict* may be amicably settled by our adoption of the just and sensible law of Scotland, before some great scandal occurs.

The last victim was a man of the name of Lolley, who, relying upon a Scotch divorce, had the boldness to marry again in England, and was in consequence convicted of bigamy by the unanimous opinion of our judges. (See *Rex. v. Lolley, Russell and Ryan, C. C. R. p. 237*). But Lolley was a plebeian, a roturier, a “caprimulgus aut fossor.” The next trial may be at the Bar of the House of Lords, and the scapegoat may be a Marquis or a Duke.

Scotland say the Commissioners and noble Lords? Still this does seem really to be a very cruel business, and to get rid of you and Scotland and Mrs. Norton, for the present at any rate, we will make you this concession also. I thank you, my Lords and Gentlemen, and I think you will have, what you will value far more, the thanks, the blessings, and the prayers of many long-suffering women—were it not for that abominable Tribunal and Appeal, we might part good friends after all.

If this all-important matter could be satisfactorily arranged by the establishment of cheap and accessible local Courts, free from the incubus of Lordly Appeal, the Bill, with the two concessions which I have ventured to represent myself as obtaining, would be a great improvement in our Law, and might be presented by an honest Reformer, without a blush, to Parliament and to the people. In its present state, it is really far worse than nothing, and is in truth an Insult rather than a Benefit to the country.

In addition to this, Mrs. Norton and I must have a Bill of our own to demolish the foolish and cruel doctrine of the absorption of the wife's person by that of her husband. We shall restore to her the separate and independent existence which God has given, and which the Law has taken away—we shall confer upon her, in the absence of any ante-nuptial contract, the absolute and uncontrolled dominion over her own property—we shall enable her to make a will, and to

contract and sue, and render her liable to be sued. The framing of our Bill will take much time, and will require much care and labour, and great knowledge of the Law;—but we are not quite helpless ourselves, and we shall find able and generous friends to aid us. In short, I trust that we shall be able to accomplish our task successfully without, or even with, the assistance of the Statute Law Commission.*

We shall, of course, introduce a clause destroying root and branch, the execrable crim. con. action; and then, I think, we shall be entitled to be members of the “Society for the Reformation of the law,” or even to aspire to an invitation to the “*Annual White Bait Dinner!*”

One reflection more, and my task is concluded. We are told by our Journals, morning and evening, weekly, monthly, and quarterly, till our hearts sicken at the nauseous repetition, that the ruthless war in which we are engaged is waged on our part, and that of our allies, in defence of civilisation, and for the protection of the weak and oppressed throughout the world. Let us hope and believe that such are its

* Perhaps I am too sanguine here—it is indeed difficult to frame clearly and correctly, in language proof against chicanery and quibbling, a Bill upon any large and intricate subject, and it must be admitted that there is little temptation to encounter the difficulty, as should a piece of legislative composition absolutely perfect be laid upon the table of either House, vanity and prejudice and presumption would probably rush forward, armed with their blunt and jagged knives, to hack and mangle and disfigure it.

glorious objects—let us pray incessantly and fervently that they may be attained ;—but how can we dare to expect that our prayers will be heard, if at home we turn traitors to the sacred cause—if, pretending to reform and civilise our own institutions, we studiously exclude from all benefit the humble and the poor, and perpetuate, instead of redressing, the wrongs of the daughters of England, the gentlest, the fairest, and the most virtuous of the human race?

APPENDIX.

*“ Extract from Evidence taken in 1844 before a
Select Committee of the House of Lords.*

“RIGHT HONOURABLE THE LORD BROUGHAM.

“1. I have received a statement from a respectable lady, who is now the mistress of a Ladies' Boarding School, and she states a case which she cannot state in evidence with her name, and she cannot even present a petition to the House (if she could it would have been referred to this Committee), because the circumstances are such as would make her situation particularly irksome were her name given. She has disclosed to me her name and all the particulars. She has been separated for many years—above twelve—from her husband, in consequence of misconduct and repeated acts of adultery on his part. She did not think it possible, nor did her family, which is respectable, for her to continue living with him. She had a small income settled upon her at the marriage, being the interest of Stock. She then, most industriously and meritoriously, in order to support herself in respectability, took to keeping a boarding-school, which has succeeded. She has succeeded in getting, suited to her moderate wishes, a respectable income; but

during the whole of the time she has had this husband entirely to support. She wishes to do as much as she can for him, notwithstanding his conduct. Nevertheless, he is not satisfied with what she can do, and is by law entitled to the whole of her property; every farthing she makes by her labour being his, because she is his wife, though separated."

"Has she ever made application for a Divorce?—
"She has never applied on account of the expense, and her very small means. Her husband has no means, he is poor too; and she gives him up as much as she can of her limited income, and as much as she can of her earnings. He has a right to the whole property, properly speaking; but she keeps what she can to support herself, which she does with considerable difficulty. He is now threatening to come to her. I cannot conceive a harder case. She cannot apply to the House of Lords for a Divorce à vinculo matrimonii, so that she should be allowed to marry again; she cannot apply to Doctor's Commons for a Divorce à mensa et thoro, because she has not the means; and she wrote to ask my advice and opinion, and to give her what information I could upon the subject. I told her what the expense would be, and what the result would be; namely, that her money would be still her husband's in case of her death."

OUR PROGRESS IN 1856.

APPENDIX TO THE SECOND EDITION.

LET me pray for the indulgence of the public, while I recount a fond but delightful vision. I was fortunate enough to dream that one afternoon in the month of June, 1856, the author of the immortal treatise "de Senectute" was present in the Senate of the "far Island of the West," of which, about ten years before his tragic death, he had first heard in the letters of the mighty Cæsar.* Expecting to see an assembly of barbarians, he was not surprised, though somewhat shocked, by the tawdry and tasteless decorations of the Curia, by the poor and ignoble habiliments of the Patricians (which the lowest of his slaves would have scorned), by their ungraceful and careless movements, and their rude and discordant explosions of laughter.

* Cicero perhaps assisted at the Supplication of twenty days decreed by the Senate, in honour of Cæsar's invasion of Britain (see Com. 4, § 34). The easy and graceful simplicity of the Commentaries of this truly wonderful man forms a strange contrast to the laboured and pompous style of modern historians. Read his lively, elegant, and modest account of his descent upon this island, and of the brave resistance of the natives, and think how the same story would be told by a fine writer of the present day. Read it, I beseech you, should you be compelled to lay aside your newspaper for half an hour—you will find it as amusing and almost as instructive as the *Times*, were it even that famous number pronounced by Mr. Cobden to be superior in value to all the works of *Thucydides*!

But what was his astonishment and delight, when the clamour was suddenly hushed by the appearance of an aged senator, attired, indeed, little better than the rest, but with the noble countenance of a Roman, and the voice and action of an orator worthy of being the antagonist of Cicero himself. With what admiration, mingled with horror and disgust at the subject of his discourse, did he hear this "old man eloquent" detail in clear and forcible language the wrongs and sufferings, not of a plundered province, or of a sacked city, but of the matrons and virgins of Albion. With what grief and indignation did he listen to those grave and majestic accents denouncing the atrocity and cruelty, not of a sacrilegious Verres, but of laws and institutions oppressive and ruinous to the citizens whom especially, and above all, they ought to protect. But how shall I attempt to describe his emotions when he was informed that this patron of the injured and the weak had entered his seventeenth lustrum, and was consequently of the very same age as the elder Cato,* and when he discovered that this remote

* "Sed redeo ad me, quartum ago annum et octogesimum" are his words—"non Curia vires meas desiderat, non Rostra, non amici, non clientes, non hospites." This great man had fought for his country (commencing as a private soldier) in many desperate battles. He had been quæstor, tribunus militum, consul and censor. He was an orator and a historian. He had lived a long and glorious republican life, yet he knew not of newspapers or railroads, steamboats or electric telegraphs, gin-sling or tobacco, Lynch Law, gouging or cow-hiding, bowie knives or revolvers; and he had never seen, I dare say, one Roman senator beaten on the head by another, with a club, in the Senate House itself!

and savage land had produced, after nearly two thousand years, a rival in dignity and authority to the Crassus and Metellus and Fabius of the ancient days of Roman virtue.

Did this vision pass through the ivory gate? was it altogether false and baseless? No—thank heaven! With the exception of the presence of the great orator of antiquity, all is substantial and real, and the noble eloquence of Lord Lyndhurst has indeed pleaded with irresistible force the cause of his country-women. Is that cause then triumphant? Is the victory won? Are the wrongs redressed? Are the atrocious laws repealed?—not yet, alas! but patience, patience! much has been gained and much more will follow; we have obtained at last what we wanted, a full, and fair, and open discussion—our friends have acquitted themselves with honour, and the weakness and imbecility of our adversaries have surpassed our most sanguine expectations. And who were those friends and those adversaries? Lyndhurst, Brougham, Lansdowne and Campbell in the one scale, *ὁ ἀμφὶ* Wilberforce in the other. Enough, enough! this immense preponderance of moral and intellectual power speaks for itself, and renders unnecessary a recapitulation of those memorable debates, which are still fresh in the recollection of the public.

The Divorce Bill of the Lord Chancellor, much improved by the strenuous exertions of Lord Lyndhurst, but sadly wanting further improvement,

has passed the House of Lords: to say that it was a Government measure sufficiently describes its fate in the Lower House. What then have we gained by this advance, so soon followed by a retreat? First and foremost, we have gained this: the Lords have decided by a very large majority, that Divorce is not in itself a wicked or forbidden or accursed thing; on the contrary, that for the rich, it is most excellent and wholesome, and that, though not so salubrious for persons of moderate incomes, it may be occasionally and very carefully administered with advantage even to them. In short, that it is only to the very poor of both sexes that it is a dangerous and deadly poison, and they have most consistently prepared a tribunal which is to dispense it in accordance with this principle, that is to say, liberally to the first-mentioned class, occasionally and sparingly to the second, and not at all to the third.

What! says one of my fair readers, do you approve of this? are *you* deserting us too? was it not for recommending exactly such a tribunal as this that you made so violent an attack upon those learned and excellent men, Her Majesty's Commissioners?

It was so—and never was attack more justly, more imperatively called for; but, dearest lady, a Commission is one thing, and a House of Lords is another. We had no Bishops upon the former, in the latter, thank heaven, we have them in abundance; and you are not

aware perhaps, that upon this subject of Divorce we have a Text of Scripture given us for our guidance, which, however, I am sorry to say, is so obscure in its language, that even the great St. Augustin himself, after devoting the greater part of his life to the study of the subject, *declined to decide absolutely* whether the text in question permitted a divorce for adultery or prohibited it. Is it possible! What! he declined to *decide absolutely*, did he? What a deadly blow to posterity! The loss of the Comedies of Menander is nothing in comparison. What are we to do next? How are we to help ourselves? What is to become of us?

Our situation is deplorable enough, it must be admitted—but take courage, there is hope for us yet. One of our own bishops is so *clever*, that he sees further into this mysterious text than St. Augustin himself. The Bishop of Hippo doubted, but the Bishop of Oxford has no doubts, and he tells us that, “according to the Word of God, marriage *may* be dissolved upon the ground of adultery.” Yes, yes, cries our *clever* bishop, but though divorce may be permitted, it is not to be *encouraged*. No *undue facilities* are to be given; an *universal laxity* is not to be introduced; the *flood-gates of license* are not to be opened. Of course not. But never mind that just at present—let us make sure of the admission that we have got, and put it carefully upon record. We all remember the reason given by the Ordinary

of Newgate for preferring punch to wine. We have now succeeded in placing Divorce in the same proud position with punch. The Bishop of Oxford assures us that "there is nothing in Scripture against it."

So far, then, I profess myself satisfied, but with a *protestando*, (as the special pleaders used to say), satisfied for the purposes of the day, but *protesting always* against the doctrine, that the great social questions of our times are to be peremptorily and imperiously settled by the authority of isolated passages of Holy Writ, promulgated in distant ages, and under totally different circumstances, and upon the true interpretation of which, and their general or partial application, no two persons are agreed.

I am aware that I am treading now upon dangerous ground, and that I run a great risk of being crushed by some *clever* bishop in a moment, amidst the applauding shouts of Sabbatarians. In truth, this notion has long been a favourite with all classes in this country, and cannot be controverted with impunity.

When Parson Supple prevented Squire Western from striking his lovely daughter, the Squire, though not quite sober, saw at once that the divine was unfit for the ministry, and exclaimed, "A pretty parson to teach children disobedience to their parents! I'll gie thee a living with a —, I'll gie un to the Devil sooner!" Had Parson Supple been Bishop Supple, and consequently known his duty in such a case, he would have encouraged the Squire, and pointed out to

him that the Scriptures not only permit but enjoin the beating of Children, and that pretty soundly too,—If the Squire had been the patron of an Archbishopric instead of a living, the Devil would have had no chance, and Bishop Supple would have walked over the course.

The two next improvements which we owe to the generous efforts of Lord Lyndhurst are very important. By one of them the Court of Divorce is reinforced by the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron, a goodly addition of strength. By the other, the cruel and foolish appeal to the House of Lords is confined to matters of law, making the decision of the Court of Divorce upon matters of fact final and conclusive. Even the Norman passion for quibbling and chicanery, which we have inherited from our conquerors, will scarcely be able to turn adultery into a question of law.

Our next triumph is, that the grounds, on which a divorce is conceded to the wife, are no longer confined (according to the views of the Commissioners and the Chancellor) to the incest and bigamy of the husband, but are extended to simple adultery when accompanied by cruelty, or desertion for four years; and as his last and greatest achievement, and to crown all his exploits, our victorious champion procured for us the insertion of clauses, by which a married woman who has obtained a Divorce a mensâ et toro, is to be considered, with respect to property, as a single woman; is enabled to sue and to contract; is rendered

liable to be sued ; is placed, in short, in the position of a free and reasonable being.

The detestable, the hideous, the monstrous Crim. Con. Action had a very narrow escape ; but its fate is decided, its doom has been pronounced, and the clock of its last hour may be heard already striking.

With what delight, with what just and honourable pride must Mrs Norton view the present state of this question ! It is to her alone, to her ardent enthusiasm, to her brilliant talents, animated by a keen sense of wrong and injustice, that the women of England owe the prospect of a speedy and complete emancipation. Yes ! it will be speedy and complete. What we have now got will soon give us all that we require. A great court for the rich will be followed, and quickly too, by little courts for the poor. A divorce for adultery, by a husband, accompanied by cruelty, will lead to a divorce for simple adultery by a husband,—for to a chaste and passionately devoted wife, what cruelty can be greater ? Above all, the placing a married woman who has obtained a divorce *a mensâ et toro* only, in an independent position, and investing her with legal rights of her own, annihilates at once the abominable doctrine, that as a necessary consequence of the marriage state the individual existence of the wife ceases, and is incorporated with or absorbed by that of her husband. Yes ! before a few short years have passed away, an English matron will stand erect as a citizen, instead of trembling and crouching like

a slave; and to Mrs. Norton as a writer, to Lord Lyndhurst as a statesman, will be due and will be paid all the glory and all the gratitude.

For myself, I will venture to borrow the lively and expressive language of a French patriot, whose hopes for the future destinies of his country have not, alas! as yet been realized. "Le monde de soi se convertit assez, sans que je m'en mêle chétif—je serais la mouche du coche, qui se passera bien de mon bourdonnement: il va, mes chers amis, et ne cesse d'aller, si sa marche nous parait lente, c'est que nous vivons un instant—que de chemin a-t-il fait depuis cinq ou six siècles! A cette heure, en plaine roulant, rien ne le peut plus arrêter."

THE END.