FORMED THAT THE MEN'S LEAGUE FOR WOMEN'S SUFFRAGE HAVE ALSO DECIDED TO ADOPT AN ANTI-GOVERNMENT POLICY—WE ARE GLAD TO LEARN THIS.

Fabian Tract No. 162.

FAMILY LIFE ON A POUND A WEEK.

BY

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Family Life on a Pound a Week.

Who are the poor? Are only those people counted poor who are driven to sleep on the Embankment or to throng the casual wards? Or does the term cover all cheap labor? If so, at what wage does poverty begin? Attention is often diverted from the condition of an individual or of a class by the perfectly accurate announcement that there are "plenty of people worse off than that," to which statement would probably be added the generally accepted formula that the poor should be divided into the "undeserving" and "deserving." Deserving of what? Nobody likes to say "of sufficient pay for the work they do." And yet if they do not deserve that, what do they deserve?

It is the purpose of this tract to describe the resources of London working men and their families when the wages range between 18s. and 24s. a week. These men are often somebody's laborers, or they may be carters, horse-keepers, porters, railway carriage washers, fish-fryers, and perhaps one may be a borough council street sweeper on half time. They are in regular work and receiving a regular wage, which means that they are not in any sense casuals, though they suffer at times from unemployment and live in the dread of it. Whole streets are inhabited by this class of family. They "keep themselves to themselves" with as much anxiety and respectability as the dwellers in a West End square. They generally live in the upper or lower half of a small house, for the whole rent of which either they or the other family are responsible to the landlord. A kind of sordid decency is the chief characteristic of their horribly monotonous streets. Mile after mile of them, every house alike except for the baker's or greengrocer's shop at the corner, they cross and recross, broken occasionally by big thoroughfares where trams, omnibuses, and public houses are. A church, a chapel, or more often a school, makes a welcome oasis in the architectural desert. The ordinary visitor seldom finds access to these houses, where the people are jealously respectable and make no claim on any charity or institution other than the hospital.

The Cost of Houseroom.

How does a Lambeth working man's wife with four children manage on a pound a week? If ordinary middle class persons were to attempt the calculation, they would stop with a sense of shock and come to the conclusion that everything, from rent to food, must be very cheap in Lambeth. Now is this so? The chief divisions in a twenty shilling budget are rent, insurance, light and heat, food. To begin with rent, a good unfurnished room in Lambeth, measuring twelve feet by fifteen feet, costs 4s. a week. A house of eighteen rooms, with storage for coal, with hot and cold water system, and sinks and waste pipes throughout, can be obtained in Kensington, rent, rates, and taxes included, for £250 a

year. If the tenant of this house paid 4s. a week for every twenty square yards of his floor space, he would, roughly speaking, pay £385 a year. But if he paid 4s. a week for the same amount of cubic space that the Lambeth man gets for his 4s., the West End householder would pay about £500 a year instead of £250. These figures are approximate, but they are calculated from real instances. Add to this that the large house has better air, greater quiet, and healthier surroundings. The man who pays a rent of 7s. or 8s. in South London may be paying over one third of his income, for which he may get three tiny rooms in a four roomed dwelling, with a mother or other relative occupying and paying for the fourth room. The living room may be ten feet by eight feet, and three of its walls may be pierced by doors, the room itself being the passage way to the back yard. Two slightly larger rooms are bedrooms. A family of eight persons divides into two parties, four elder children sleep in one bed in one room, while the parents and two younger children sleep in the other. The four elder children go, perhaps, to three different schools. When one of them brings home measles from its school measles go round the bed; when another brings home whooping cough from its school the same course is pursued by whooping cough. The afflicted children are kept away from school, but the baby and the two year old, who are both teething, have no chance of escape. The distracted mothers do what they can, but in many cases the rooms are terribly damp, and in many the chimneys smoke continually. The convalescence of the children—if they do convalesce—is difficult and prolonged. For one third of his income then the man with £1 or 22s. a week cannot afford space enough for health. His wife may have to carry all her water upstairs and, when it is used, carry it down again. There is no storage for coal; perhaps no room for the humblest mailcart for the baby. Add to this that as likely as not the walls are old and infested with bugs, which defy the cleanest woman, and can only be kept under by constant fumigation and repapering. It is obvious that the well-to-do man for less than a third of his income can afford a better bargain than this for the housing of his family.

Coal is another necessary which the poor cannot afford to buy economically. The woman with 20s. a week must buy by the hundredweight. She pays from 1s. 4d. in the summer to 1s. 7d. or 1s. 8d. in the winter. The same quality of coal can be bought by the ton in Kensington for less than 1s. per cwt. in the summer and for 1s. 1d. in the winter. Gas also is dearer by the pennyworth than by the 1,000 cubic feet.

Certain kinds of food can be bought cheaply in Lambeth Walk of a Sunday morning—meat which would not be saleable on Monday—vegetables in the same plight. But sugar has risen as ruthlessly for the poor as for the rich, milk has done the same, and even the tinned milk which is separated before being tinned, and which is the only milk a woman with 20s. a week can afford, is now a halfpenny more a tin. Bread is no cheaper in Lambeth than in Kensington, but the Lambeth woman buys hers at the shop because she is then entitled to the legal weight, whereas the "delivered"

bread of the West End is known as "fancy" bread by the trade and is generally under weight.

Insurance for Funerals.

Insurance in Lambeth (up to the time of writing) means burial insurance. The middle class man does not need to pay out something like a twentieth part of his income in order to provide for the possible burials in his family. The poorly paid working man is driven to this great expense for two reasons. First, he is likely to lose one or more of his children, and the poorer he is the more likely he is to lose them; second, the cost of a funeral, including cemetery fees, is out of all proportion to his means. It is generally supposed that poor people, rather than miss the delight of a gorgeous funeral, will dissipate money which ought to be spent on rent or food or thrift. As a matter of fact undertakers in Lambeth or Kennington will bury an infant for the sum of 28s. or 30s. This includes the cemetery fee of 10s. An older child will cost according to size, a child of three perhaps £2 5s., until the length of the body is too great to go under the box seat of the funeral vehicle, when a hearse becomes necessary and the price leaps to something like £4 4s. At a later stage the cemetery fee goes up. Under these circumstances the poor man has as alternatives burial by the parish and insurance. It is the insurance which is the extravagance—not the way he manages his funerals. But his fear of being made a pauper or of being driven to borrow the price of a child's funeral keeps his wife paying a weekly sum, varying with the number of children, of from 6d. to a 1s. or even over. One penny a week from birth barely covers the funeral expenses at any age in childhood. Adults commonly pay 2d. a week. A peculiar hardship which often befalls the poor man is that, owing to periods of unemployment, his payments are interrupted and his policies may therefore lapse. His children are at those times less well fed and more likely to die, and he may quite well be driven to the disgrace of a pauper burial after having paid insurance for many years. Burial by the parish is taboo among the poor. It is no use arguing the case with them. The parents fiercely resent being made paupers because of their bereavement. Moreover they consider the pauper burial unnecessarily wanting in dignity and respect. They say that as soon as have the parish they would have the dustman call for their dead. The three years' old daughter of a carter out of work died of tuberculosis. The father, whose policies had lapsed, borrowed the sum of £2 5s. necessary to bury the child. The mother was four months paying the debt off by reducing the food of herself and of the five other children. To reduce the food of the breadwinner is an impossibility. The funeral cortège consisted of one vehicle in which the little coffin went under the driver's seat. The parents and a neighbour sat in the back part of the vehicle. They saw the child buried in a common grave with twelve other coffins of all sizes. "We 'ad to keep a sharp eye out for Edie," they said; "she were so little she were almost 'id."

The following is an account kept of the funeral of a child of six months who died of infantile cholera in the deadly month of August, 1911.

The parents had insured her for 2d. a week, being unusually careful people. The sum received was £2.

Funeral	£1	12	0
Death certificate	0	1	3
Gravediggers	0	2	0
Hearse attendants	0	2	0
Woman to lay her out	0	2	0
Insurance agent	0	1	0
Flowers	0	0	6
Black tie for father	0	1	0
	£2	1	9

This child was buried in a common grave with three others. There is no display and no extravagance in this list. The tips to the gravediggers, hearse attendants and insurance agent were all urgently applied for, though not in every case by the person who received the money. The cost of the child's illness had amounted to 10s.—chiefly spent on special food. The survivors lived on reduced rations for two weeks in order to get square again. The fathers's wage was 24s., every penny of which he always handed over to his wife. Until burial can be made an honorable public service there seems to be no hope of relief in this direction for the family living on any sum round about £1 a week.

How the Budgets were obtained.

In order to explain how the family budgets given further on were obtained, it is necessary to state that an investigation has been carried on for three years by a small committee formed of members of the Fabian Women's Group. The investigation has for its object observation of the effect on mother and child of proper nourishment before and after birth.

To further this enquiry it was found necessary to take down each week in writing the whole family expenditure for that week. The budgets thus collected began before the birth of the child and continued until the child was a year old. The names of expectant mothers were taken at random from the out-patient department of a well known lying-in hospital. Only legally married people were dealt with because the hospital confined itself to such persons. The committee decided to refuse cases where virulent disease in the parents might outweigh the benefits of proper nourishment, but it was considered that moderate drinking on the part of the parents would probably be a normal condition and must therefore be accepted. As a matter of fact, tuberculosis in some form or other was found to be so common that to rule it out would be to refuse almost half the cases. Respiratory and tuberculous disease was therefore accepted. With regard to drink, on the contrary, only one instance did we find of a woman who drank. A few men were supposed to take a glass, but in every case but one they faithfully rendered over to their wives the agreed upon weekly allowance. Out of fifty cases taken at haphazard this is a good record.

As may well be imagined, the visitors did not find accounts in being. The women "knew it in their heads," they said, but to write it down was absurdly impossible. Gradually, however, the interest grew, and with patience a few weeks generally saw some kind of record of the family expenditure. The first attempts taught the investigator far more than they taught the mother. A book was supplied to each woman, and week after week she entered in it every penny she received and spent. Wednesday was the great day when, with her floor scrubbed and her hair as tidy as she could manage, she disentangled these accounts with the aid of the visitor. Her spelling was curious, but her arithmetic was generally correct. "Sewuitt . . . 1¾" was as serious an error as the figures often knew. "Coul . . thruppons" is Lambeth for "cow-heel . . 3d." Seeing the visitor hesitate over the item "yearn . . . 1d," the offended mother wrote next week, "yearn is for mending sokes." Eight women were found who could neither read nor write. Sometimes they had only forgotten, and were capable of being coaxed back into literary endeavour, but in a few stubborn cases the husband came to the rescue, and in three, eldest sons or daughters, aged ten or twelve, were the scribes. One wrote in large copper-plate, "peper . . . apeny," which threatened to remain ambiguous till his return from school. Fortunately the mother had a burst of memory. Another entry, "earrins , . too d" gave a lot of trouble, but turned out to mean "herrings . . . 2d." A literary genius of thirteen kept her accounts as a kind of diary, part of which ran as follows.

"Mr. D, ad too diners for thruppence, wich is not mutch e bein such a arty man."

Pages of this serial had to be reduced, though with regret, to the limits of ordinary accounts. Many of the women enjoyed their task, and proudly produced correct budgets week after week.

A typical budget is that of Mrs. X. Her husband is a railway carriage washer, who earns 18s. for a six days week and 21s. every other week when he works seven days. He pays his wife all that he earns. There are three children. The two budgets were taken on March 22nd and March 29th, 1911.

A 21S. WEEK.

	s.	d.	
Rent	7	0	
Clothing club	1	2	for two weeks.
Insurance	1	6	for two weeks.
Coal and wood	1	7	
Coke	0	3	
Gas	0	10	
Soap, soda	0	5	
Matches	0	1	
Blacklead, blacking	0	1	
	12	11	

Left for food 8s. 1d.

	s.	d.
11 loaves	2	7
1 quartern flour	0	5½
Meat	1	10
Potatoes and greens	0	9½
½ lb. butter	0	6
1 lb. jam	0	3
6 oz. tea	0	6
2 lb. sugar	0	4
1 tin milk	0	4
Cocoa	0	4
Suet	0	2
	8	1

Average per head for food 1s. 7½d. a week, or less than 3d. a day all round the family. But a working man cannot do on less than 6d. a day, which means 3s. 6d. a week. This reduces the average of the mother and children to 1s. 1¾d. or less than 2d. a day.

AN 18S. WEEK.

	s.	d.
Rent	7	0
Coal and wood	1	7
Gas	0	10
Soap, soda	0	5
Matches	0	1
	9	11

Left for food 8s. 1d.

	s.	d.
11 loaves	2	7
1 quartern flour	0	5½
Meat	1	9½
Potatoes and greens	0	9
½ lb. butter	0	6
1 lb. jam	0	3
6 oz. tea	0	6
2 lb. sugar	0	4
1 tin milk	0	4
Cocoa	0	4
Suet	0	3
	8	1

Average per head for food 1s. 7½d. a week, or less than 3d. a day.

In the same street lives Mrs. Y, whose husband is a laborer who works at Hackney Marshes, a long way off. He earns 24s. and gives his wife 19s. 6d. His fares cost 3s. 6d. a week. There are three children. Date of visit October 25th, 1911.

	s.	d.
Rent	7	0
Insurance	0	7
Calico club	0	6
Coal club	1	0
Soap, soda	0	4½
Gas	0	8
Blacklead and blacking	0	1
Mangling	0	2
Wood	0	1
1 yard flannelette	0	2¾
Hearthstone	0	½
	10	8¾

Left for food 8s. 9¼d.

	s.	d.
7 loaves and 7 loaf bottoms	2	7½
½ quartern flour	0	2¾
Meat	2	9½
Potatoes and greens	0	10
1 lb. butter	0	10
½ lb. tea	0	7
3 lb. sugar	0	7½
Fish	0	3
	8	9¼

Average for food per head 1s. 9d. a week, or 3d. a day.

Mr. Y. is rather a bigger man than most Lambeth workers, and requires at least 4s. a week spent on his food. Hardly too large an allowance for a working man. But that reduces the average spent on the rest of the family to 1s. 2¼d. a week per head or 2d. a day.

The housekeeping allowance is often all that the man earns. The wife either allows him a few coppers for fares, or not, as she can afford. Where the wage is regular, but below £1 a week, this is usually the case. A man with 24s. will keep 2s. or 2s. 6d., and will dress, drink, smoke, and pay fares out of it. A very usual amount for a man to pay his wife is 20s. a week. It almost looks as though there were an understanding that, where possible, that is the correct sum. The workman earning 20s. a week often pays it all over to his wife. If his wages rise to 22s. he goes on paying the 20s. and keeps the extra money. Given, then, the 20s. a week it entirely depends on how many children there are, whether the family lives on insufficient food or on miserably insufficient food—whether the family is merely badly housed or is frightfully crowded as well as badly housed.

To illustrate this, here are the budgets of three women with varying numbers of children, each of whom is allowed 23s. a week—an amount which generally means that the husband is earning about 25s. In one of these cases this is so, but in the other two it will be noticed that the 23s. is the whole family income. In spite of this,

and in spite of the fact that it is above the average allowance, the amount spent a week per head on food falls to 1s. 1¼d. all round when there are six children. If 3s. 6d. be spent on the man, the average for the woman and children is 9¼d. per week.

Mr. A, horsekeeper, wages 25s., gives wife 23s., three children born, three alive, five persons to feed. March 24th, 1909.

	s.	d.
Rent	6	6
Insurance	0	10
1 cwt. coal	1	6
Lamp oil	0	5
Boots...	1	6½
Soap and soda	0	4
Wood	0	2
	11	3½

Left for food 11s. 8½d.

	s.	d.
11 loaves	2	6¼
Meat	3	11
Potatoes	0	10
Greens	0	2½
1 lb. margarine, 1 lb. jam	0	9
8 oz. tea	0	8
2 tins milk	0	6
2 lbs. sugar	0	4½
½ quartern flour	0	3
Bacon and fish	0	11
Rice	0	3
Suet	0	2¼
Pot herbs	0	4
	11	8½

Average for food per head a week 2s. 4d. or 4d. a day.

Mr. B sells on commission, earns about 15s., boy earns 2s., girl 6s., wife gets in all 23s., five children born, five alive, seven persons to feed. July 6th, 1910.

	s.	d.
Rent	7	6
Insurance	0	7
½ cwt. coal	0	7½
Gas	1	0
Boots...	2	6
Soap and soda	0	4¼
Hat	1	0¾
Saved	0	2¼
	13	9¾

Left for food 9s. 2¼d.

	s.	d.
9½ loaves	2	3
Meat	2	6
Potatoes	0	7
Greens	0	2½
1 lb. butter	1	0
7 oz. tea	0	7
1 tin milk	0	3½
3 lbs. sugar	0	6¾
½ quartern flour	0	2½
Bacon	0	4½
Cornflour	0	2½
Currants	0	1½
½ lb. cheese	0	3½
	9	2¼

Average for food per head a week 1s. 3¾d. or 2¼d. a day.

Mr. C, carter, wages 23s., gives wife 23s., seven children born, six alive, eight persons to feed. April 21st, 1910.

	s.	d.
Rent	8	6
Insurance	1	0
1 cwt. coal	1	6
Gas	0	11
Boots mended	1	8¼
Clothing club	0	6
	14	1¼

Left for food 8s. 10¾d.

	s.	d.
14 loaves	3	2½
Meat	2	0¼
Potatoes	0	9
Greens	0	3
2 lb. margarine	1	0
4 oz. tea	0	4
No milk.		
4½ lb. sugar	0	9
½ quartern flour	0	3
No bacon.		
Dripping	0	4
	8	10¾

Average for food per head a week 1s. 1¼d. or almost 2d. a day.

In these three budgets the women housed their families as well as they could and economized in food when the family increased. The rooms were as large and light as they could get—inadequate and

bad, of course, but not specially dark or damp. Mrs. B needed less coal in July, so she laid out extra money on clothes. She always saved, if it were only a farthing. It is curious to note how with the larger family the first set of expenses goes up and the amount left over for food goes down. On the whole these families were about equally housed. The first two women have so far reared all their children. Mrs. C has lost one. Compare this result with the second and third of the following budgets, where the women economized in rent in order to spend more on food.

Mr. D, emergency 'bus conductor, wages 4s. a day, four or five days a week, five children born, five alive. August 25th, 1910.

	s.	d.
Rent	9	0*
Insurance	0	7
½ cwt. coal	0	8
Gas	0	4
Soap, soda	0	2
Matches	0	1
	10	10

* Three light, dry, airy rooms at top of model dwelling.

Left for food 6s. 6½d.

	s.	d.
10 loaves	2	3½
Meat	1	8
Potatoes	0	6
Vegetables	0	2
1 lb. margarine	0	7½
6 oz. tea	0	6
2 tins milk	0	6
1½ lb. sugar	0	3½
	6	6½

Week's average per head for food 11¼d. or 1¾d. a day.

Mr. E, fishmonger's assistant, wages 24s., seven children born, four alive. March 24th, 1910.

	s.	d.
Rent	5	6*
Insurance	0	7
1¾ cwt. coal	2	3
Gas	1	0
Starch, soap, soda	0	5
Wood	0	1
Newspaper	0	1
	9	11

* Two fair sized, but very dark, damp rooms in deep basement.

Left for food 12s. 7½d.

	s.	d.
10 loaves	2	3½
Meat	5	2
Potatoes	0	6
Greens	0	4
1 lb. butter, 1 lb. jam	1	3½
8 oz. tea	0	8
6½ pints fresh milk	1	1
2½ lb. sugar	0	5¼
½ qrtn. flour	0	2¾
Bacon	0	6
Currants	0	1½
	12	7½

Week's average per head for food 2s. 1¼d. or 3¾d. a day.

Mr. F, carter, wages 22s., nine children born, four alive. July 14th, 1910.

	s.	d.
Rent	4	6*
Insurance	0	8½
1 cwt. coal	1	6
Lamp oil	0	8
Starch, soap, soda	0	5
Boot club	1	0
Clothing club	0	6
	9	3½

* Two tiny rooms in very old one storey cottage below level of alley way.

Left for food 10s. 8½.

	s.	d.
11 loaves	2	6
Meat and fish	3	0
Potatoes	0	8
Vegetables	0	5
1 lb. margarine, 1 lb. jam	0	10½
8 oz. tea	0	8
1 tin milk	0	3½
4 lb. sugar	0	10
1 qrtn. flour	0	6
Bovril	0	6½
2 lb. rice	0	4
Salt, pepper	0	1
	10	8½

Week's average per head for food 1s. 9½d. or 3d. a day.

All the children in these three families are delicate. Perhaps there is a worse heredity in the case of Mrs. D's children than in the other two. Mrs. D, who had only 17s. 4½d. to spend and a child more to spend it on, paid 3s. 6d. more in rent than Mrs. E, and 4s. 6d. more than Mrs. F. She spent less on coal and gas than either of the others—even taking into account that July is a warm, light month. She spent less on cleaning and nothing on clothes. She fed her family—her husband, herself and five children—on 11¼d. a head a week. All her children were living.

Mrs. E, who lives in very damp, dark rooms, has to spend heavily on coal and gas to keep them warm and lighted Even for the time of year she takes an unusual amount of coal. She spends more on cleaning, and takes in a Sunday paper. She had 22s. 6½d. to spend, and was able to allow 2s. 1½d. a week a head for food. She has lost three children.

Mrs. F economizes in food as well as rent, and spends 1s. 6d. a week on clothing. She has lost five children.

Each of these families had lived a very long time in the rooms described. The three women were clean, hardworking, and tidy to a fault. The men decent, kindly, sober and industrious. The comparison of the two tables seems to show that air, light and freedom from damp are as necessary to the health of young children as even sufficient and proper food. In fact, the mother who provided good housing conditions and fed the family on 11¼d. a head per week, did better for her children than the mother who lived in the underground rooms—spent plenty of money on coal, and fed her family on 2s. 1¼d. a head per week. The poor mother who economized on both food and rent in order to clothe decently did worst of all.

Another budget which compares interestingly on this point with Mrs. F's is that of Mrs. G. She has slightly over 20s. a week, sometimes a few pence over, sometimes more than a shilling over. She houses her children better than Mrs. F does, and spends much less a week on food. She has reared all her six children.

Mr. G, printer's laborer, wages 24s., six children born, six living. He goes a long distance to his work and is obliged to spend on fares. Date of budget, September 20th, 1911.

Mrs. G.

	s.	d.
Rent	8	0
Insurance	1	8
¾ cwt. coal	1	0
Gas	0	11
Starch, soap, soda	0	5
Boot club	1	0
Clothing club	0	6
Boot laces	0	1½
Matches	0	1
Blacking	0	0½
	13	9

Left for food 7s. 11d.

	s.	d.
14 loaves	2	11
Meat	2	0
Potatoes	0	6
Vegetables	0	4
1 lb. margarine	0	6
No tea		
2 tins milk	0	7
2 lb. sugar	0	5
1 qrtn. flour	0	5
Salt	0	1
Pot herbs	0	2
	7	11

Week's average per head for food 1s.

Mrs. F.

	s.	d.
Rent	4	6
Insurance	0	8½
1 cwt. coal	1	6
Lamp oil	0	8
Starch, soap, soda	0	5
Boot club	1	0
Clothing club	0	6
	9	3½

Left for food 10s. 8½d.

	s.	d.
11 loaves	2	6
Meat and fish	3	0
Potatoes	0	8
Vegetables	0	5
Margarine and jam	0	10½
8 oz. tea	0	8
1 tin milk	0	3½
4 lb. sugar	0	10
1 qrtn. flour	0	6
Salt, pepper	0	1
Bovril	0	6½
2 lb. rice	0	4
	10	8½

Week's average per head for food 1s. 9½d.

It will be seen that Mrs. G spends a regular 1s. 6d. a week on clothes, the same amount that Mrs F does. She has 21s. 8d. to spend, where Mrs. F has 20s., but she has six children, whereas Mrs. F has four. She spends 3s. 6d. a week more on rent, and certainly houses her family better, having three small, inconvenient, crowded,

but fairly light, dry rooms, in place of Mrs. F's terrible little abode. She buys cheaper bread and flour, and spends but 1s. a week a head on food. She has lost no children, whereas Mrs. F has lost five. It is not to be supposed that the surviving children of Mrs. F, or the children of Mrs. G are robust and strong. Poverty has killed Mrs. F's five weakest children and drained the vitality of her four stronger ones. Poverty has prevented any of Mrs. G's children from being strong. The malnutrition of school children, which was so conspicuously mentioned in the published report of Sir George Newman, Chief Medical Officer of the Board of Education, seems to be explained by these budgets. The idea that mothers who have to feed man, woman and children on 1s. a head a week can do anything else than underfeed them must be abandoned. But it is also evident that the mothers who in desperation try economizing in rent in order to feed better are doing unwisely.

The question of food values is much discussed in connection with ignorance and extravagance on the part of the poor. It is possible, of course, that a shilling, or elevenpence farthing might be laid out to better advantage on a week's food than is done in the foregoing budgets. But superior food value generally means longer cooking—more utensils—more wholesome air and storage conveniences than can be commanded by these women. To take porridge as an instance. When well cooked for an hour and eaten with milk and sugar, most children would find it delicious and wholesome. But when the remainder of last night's pennyworth of gas is all that can be allowed for its cooking, when the pot is the same as that in which fish or potatoes or meat are cooked, when it has to be eaten half raw without milk and with but a hint of sugar, the children loathe it. They eat bread and dripping with relish. No cooking is required there, for which the weary, harassed mother is only too thankful—so they almost live on bread and dripping. A normal menu for a family of seven persons living on £1 a week is as follows :—

Breakfast for seven persons.

1 loaf; 1 oz. dripping or margarine; ¼ oz. tea; ½ oz. sugar; ¼d. worth tinned milk.

Dinners.

Sunday, 3 lb. meat; 3 lb. potatoes; 1 cabbage.
Monday, any meat left from Sunday, with suet pudding. The father on weekdays taking a chop or other food with him to work.
Tuesday, Thursday, Friday, Saturday, suet pudding, with treacle or sugar, or gravy and potatoes.
Wednesday, 1 lb. meat and potatoes stewed with onions.

Tea for seven persons.

1 loaf; 1 oz. dripping or margarine; ¼ oz. tea; ½ oz. sugar; ¼d. worth of tinned milk; Saturday evening may see a rasher or a bloater for the man's tea.

It will be noticed both from the budgets and from this menu that tinned milk is the only milk which the mother can afford. Each of these threepenny tins bears round it in red letters the words "This milk is not recommended as food for infants." Nevertheless it is the only milk the infants get unless their mother can nurse them. If the mothers are able to nurse they always do for two very convincing reasons—it is cheaper—it is less trouble. But the milk of a mother fed on such diet is not the elixir of life which it could be, and which, under different conditions, it should be. Very often it fails her altogether. Then the child is fed on tinned milk. When it is fractious, because it is miserably unsatisfied, it is given a dummy teat to suck or a raisin wrapped in a bit of rag. This is not because the mother is ignorant of the fact that she could nurse much better if she took plenty of milk, or that if her child must be brought up by hand it were better to feed it from the L.C.C. milk depôt. It is because milk usually costs 4d. a quart, and just now costs 5d., and either price is prohibitive. The milk depôt feeds a new baby for 9d. a week till it is three months old, when 1s. 6d. is charged. The price rises regularly till it reaches something like 3s. at the age of a year. In a family where the weekly average is 1s., or even 1s. 3d., 1s. 6d. cannot be devoted to the new baby without cutting down the average for everybody else. So baby often has "jest wot we 'ave ourselves." It is all there is for him to have.

Meals and Manners.

The diet for the other children is chiefly bread, with suet pudding for a change. Often they do not sit down for a meal; it is not worth while. A table is covered with newspaper and as many plates as there are children are put round with a portion on each. The eating of this meal may take ten minutes or perhaps less. The children stand round, eat, snatch up caps and hats, and are off to school again. Breakfast and tea are, as often as not, eaten while the child plays in the yard or walks to school. A slice of bread, spread with something, is handed to each, and they eat it how and where they will. In some cases the father comes home for a meal at some inconvenient hour in the afternoon, such as half past three or four or five. This may mean that the children's chief meal takes place then in order to economize coal or gas and make one cooking do. This is not because the mother is lazy and indifferent to her children's well being. It is because she has but one pair of hands and but one overburdened brain. She can just get through her day if she does everything she has to do inefficiently. Give her six children, and between the bearing of them and the rearing of them she has little extra vitality left for scientific cooking, even if she could afford the necessary time and appliances. In fact one woman is not equal to the bearing and efficient, proper care of six children. She can make one bed for four of them, but if she had to make four beds, if she had to separate the boys from the girls and keep two rooms clean instead of one, if she had to make proper clothing and keep those clothes properly washed and ironed and mended, if she

had to give each child a daily bath, if she had to attend thoroughly to teeth, noses, ears, and eyes, if she had to cook really nourishing food, with adequate utensils and dishes, and if she had to wash up these utensils and dishes after every meal, she would need not only far more money, but far more help. The children of the poor suffer from want of light, want of air, want of warmth, want of sufficient and proper food, and want of clothes, because the wage of their fathers is not enough to pay for these necessaries. They also suffer from want of cleanliness, want of attention to health, want of peace and quiet, because the strength of their mothers is not enough to provide these necessary conditions.

Clothing.

It is easy to say that the mothers manage badly. If they economize in rent the children die. If they economize in food the children may live, but in a weakened state. There is nothing else that they can economize in. Fuel and light are used sparingly; there is no room for reduction there. Clothes hardly appear in the poorer budgets at all. In the course of fifteen months visiting, one family on 23s. a week spent £3 5s. 5½d. on clothes for the mother and six children. Half of the sum was spent on boots, so that the clothes, other than boots, of seven people cost 32s. 9d. in fifteen months, an average of 4s. 8d. a head. Another family spent 9d. a week on boots and 9d. a week on clothes in general. There were four children. Other families again only buy clothes when summer comes and less is needed for fuel. Boots are the chief expense under this heading, and few fathers in Lambeth are not able to sole a little boot with some sort of skill. Most of the body clothing is bought third and fourth hand. How it is that the women's garments do not drop off them is a mystery. They never seem to buy new ones, and yet the hard wear to which the clothes are subjected ought to finish them in a month. It is obvious that clothing can hardly be further reduced. Remains insurance. It has been shown that steady, hard-working people refuse to have their dead buried by the parish. If they should change their attitude to this question and decide to economize here, it is difficult to imagine the state of mind of the "parish" when confronted by the problem.

How then is the man on a pound a week to house his children decently and feed them sufficiently? How is his wife to care for them properly? The answer is that, in London at least, be they never so hardworking and sober and thrifty, the task is impossible.

But there is a large class who get less than a pound a week. There is also a large class who get work irregularly. How do such people manage?

A small proportion of the cases undertaken in the investigation, from ill health and other causes, fell out of work. Their subsequent struggles afford material with which to answer this question.

Mr. H, carter, out of work through illness, gets an odd job once or twice in the week. Wages 24s. when in work. Six children born, five alive.

July 7th, 1910, had earned 5s. 5d.

	s.	d.
Rent ...	goes unpaid	
Insurance	lapsed	
Coal ...	0	2
Soap, soda	0	4
Gas ...	0	6
Matches	0	1
Blacklead	0	0½
	1	1½

Leaving for food 4s. 3½d.

	s.	d.
9 loaves	2	0¾
Meat ...	0	9
Potatoes	0	3
Vegetables	0	1
Margarine	0	1¾
3 oz. tea	0	3
Tinned milk	none	
1½ lb. sugar	0	3
Dripping	0	6
	4	3½

Or an average per head for food of 7¼d. a week, or 1d. a day.

July 14th had earned 15s. 10d.

	s.	d.
Rent (two weeks)	11	0
Insurance	lapsed	
Coal ...	0	2
Gas ...	0	5
Soap, soda, blue	0	4½
Wood	0	0½
	12	0

Leaving for food 3s. 10d.

	s.	d.
7 loaves	1	7¼
Meat ...	0	6
Potatoes	0	3½
Vegetables	0	1
Margarine	—	
4 oz. tea	0	4
Tinned milk	—	
1½ lb. sugar	0	3
Dripping	0	6
1 lb. jam	0	3¼
	3	10

Or an average per head for food of 6½d. a week, or less than 1d. a day.

Mr. I, bottle washer, out of work through illness, wife earned what she could. Wages 18s. when in work. One child born, one alive.

August 10th, 1910. Mrs. I had earned 2s. 6d.

	s.	d.
Rent ...	went unpaid	
Insurance	lapsed	
Coal ...	—	
Lamp oil	—	
Soap, soda	—	
	nothing	

Mrs. I was told by infirmary doctor to feed her husband up.

	s.	d.
3 loaves	0	8¼
Meat ...	1	1
Potatoes	0	3
Vegetables	0	0¾
3 oz. tea	0	3
1 lb. sugar	0	2
	2	6

Average per head for food 10d. or 1½d. a day.

August 17th. Mrs. I had earned 3s. 6d.

	s.	d.
Rent ...	went unpaid	
Insurance	—	
Coal ...	0	4
Lamp oil	0	2
Soap ...	0	2
Firewood	0	1
	0	9

Mrs. I still feeding her husband up.

	s.	d.
4 loaves	0	11
Meat ...	1	0
Potatoes	0	2
Vegetables	0	1
1 oz. tea	0	1
1½ lb. sugar	0	3
Margarine	0	3
	2	9

Average per head for food 11d. or 1⅘d. per day.

When Mr. I could earn again, his back rent amounted to 15s. He found work at Finsbury Park, he living south of Kennington Park. He walked to and from his work every day, refusing to move because he and his wife were known in Kennington, and rather than see them go into the "house" their friends would help them through a bad spell. People in that class never write, and to move away from friends and relations is to quit the last hope of assistance should misfortune come. Mr. Y, who works on Hackney Marshes while living at Kennington, is another instance of this. A fish fryer who had to take work at Finsbury Park declared that he walked eighteen miles a day to and from his work.

Mr. J, carter out of work through illness, took out an organ when well enough to push it. Wages 18s. when in work. Six children born, six alive.

Jan. 26th, 1910, Mr. and Mrs. J had earned between them 9s.

Feb. 2nd,	,,	,,	,,	,,	7s.
Feb. 9th,	,,	,,	,,	,,	8s. 10d.
Feb. 16th,	,,	,,	,,	,,	9s.
Feb. 23rd,	,,	,,	,,	,,	7s. 6d.

	Jan. 26th	Feb. 2nd	Feb. 9th	Feb. 16th	Feb. 23rd
	s. d.	s. d.	s. d.	s. d.	s. d.
Rent ...	5 6	3 0	5 6	5 6	3 6
Coal ...	0 6	0 6	0 4	0 6	0 6
Wood ...	0 1	0 1	0 1	0 1	0 1½
Lamp oil...	0 1	0 1	0 1	0 1	0 1½
Soap, soda..	0 2	0 2	0 2	0 2	0 4
	6 4	3 10	6 2	6 4	4 7
Leaving for food ...	2 8	3 2	2 8	2 8	2 11
Average for food per head a week in holidays	0 4	almost 5	0 4	0 4	0 4½

Those children who were of school age in these three families were fed once a day for five days a week during term time. None of the children were earning. The three women were extremely clean and, as far as their wretched means would allow, were good managers. It is impossible to lay out to advantage money which comes in spasmodically and belated, so that some urgent need must be attended to with each penny as it is earned. After a certain point of starvation food must come first, though before that point is reached it is extraordinary how often rent seems to be made a first charge on wages.

It is an undoubted fact that the great majority of babies born to this class of parent come into the world normal as regards weight ; cosy fat little creatures who should flourish and thrive in decent conditions. At the end of a year they show many signs of

delicacy most of which have been created by lack of warmth, lack of air, lack of light, lack of medical care, lack of food. It seems certain that could these children have what is necessary to a healthy child they are capable of growing up into healthy men and women. Baby clinics, school clinics, free public baths, free public wash-houses would seem to be but the beginning of a scheme of national care for the nation's children. The argument that the conditions described in this tract are useful in that they kill off the sickly children and allow the stronger to survive is an argument which is not followed by its supporters to a logical conclusion. The conditions which kill a weak child drain and devitalize strong children. For every one who dies three or four others live to be in need later on of sanatorium or hospital, or even asylum. It would surely pay the nation to turn its attention to the rearing of its children. It is no use urging that parents are drunken, and lazy and vicious ; where that is true all the more do their children need protection and care ; in fact, they only have to be drunken and lazy and vicious enough, for their children to be boarded out by the local authority, and four shillings paid weekly for their food alone, a sum undreamed of by the ordinary decent mother on a pound a week. If the parents, with all the strength, with all the industry, with all the thrift, with all the anxious care shown by these budgets, can only lodge their children as they do, and feed them as they do, what is the use of appealing to the parents for what only money can procure, money being the one thing they have not got ? If this rich and powerful nation desires to have strong, healthy children, who are worthy of it, what is to prevent it ? There is no reason why the school children should suffer from malnutrition, or why an unusually beautiful summer should kill off the babies like flies.

What Can be Done ?

The remedy for this state of things is not easy to devise. Advance is likely to be made along two lines where it has already begun—the growing demand for a national minimum wage and the responsibility for the nation's children which is being increasingly assumed by the State. Trade boards are a beginning, piecemeal and tentative, which should make a starting point for a strong effort to attain a national minimum wage throughout the kingdom. It would be comparatively simple to define a fair wage for the individual worker. In Fabian Tract No. 128, "The Case for a Legal Minimum Wage," the difficulties and limitations, as well as the advantages, of that bed of Procrustes, a family minimum wage, are very fully dealt with. But, after all, the whole question raised by these budgets is one of children. A wage which was a tight fit for three children would be miserably inadequate for six or seven. Add to this that there is no certainty that the wage earner, man or woman, would always spend the whole wage upon actual necessaries. If amusements, however innocent, were brought into the budget, something already in it would have to go. Very moderate drinking would upset the balance altogether. It is not reasonable to expect

working class men and women never to spend on other things than rent, insurance, clothing, firing, and food. Middle class people do not expect from themselves such iron self-control. Children, once an economic asset, are now a cause of expense, continually increased by legislation, which tends more and more to take children and young persons out of the labor market. The State, which has wisely decreed that children shall not be self-supporting, has no more valuable asset than these children were they reared under conditions favorable to child life instead of in the darkness and dampness and semi-starvation which is all that the decent, hardworking poor can now afford. Any minimum wage which is likely to be wrung from the pockets of the employing class during the next few years would not affect the question raised by the earlier budgets in this tract where the wage is already over £1 a week. Therefore, along with a strenuous demand for a national minimum wage, advance must be made on the line already laid down by the State in its provision of free and compulsory education for its children and in its statutory endorsement of the principle of school feeding. The establishment of school clinics, which is a step likely soon to become general, ought to be followed by a national system of compulsorily attended baby clinics. It is obvious from official reports already laid before the public that by the time they can be received into a national school many children have already suffered for want of medical attention. The doctors in charge of baby clinics, knowing that what a hungry, healthy infant wants is milk, and being confronted week after week with the same hungry infants gradually growing less and less healthy as their need was not satisfied, would collect and tabulate in their reports an amount of evidence on the subject which would revolutionize public opinion on the question of the nation's children and their needs.

If men, already in steady receipt of wages as high as any minimum wage likely to be attained for years to come, can only feed and house their families after the strictest personal self-denial, as these budgets show, the State, if it is to concern itself with its most vital affairs, should recognize its ultimate responsibility for the proper maintenance of its children. That this responsibility might eventually take the shape suggested in "The Case for a Legal Minimum Wage," for the children of widows or unmarried women, is quite possible. Some form of child maintenance grant might be placed in the hands of parents who, as joint administrators, would be answerable for the well-being of their children. It would be easy to discover through the clinics whether this duty was in each case being efficiently performed. A child, presented happy and well cared for, would be a sufficient guarantee, and a child whose condition appeared to be unsatisfactory would be noted and all necessary steps would be taken to secure its welfare. The country has faced the dead weight of Old Age Pensions; it is not impossible that the creative and repaying task of building up the nation's youth should be collectively undertaken.

WAGE EARNERS' BUDGETS. BOOKS RECOMMENDED.

Bell, Lady.—At the Works. A Study of a Manufacturing Town. Arnold. 1907. 6s.

Chapin, Robert Coit, Ph.D.—The Standard of Living among Working Men's Families in New York City. New York, Charities Publication Committee. 1909. Contains a useful bibliography of methods of budget keeping and tabulation, and of printed collections of budgets.

Davies, M. F.—Life in an English Village. 1909. Unwin. 10s. 6d. net.

Le Play, Frédéric.—Les Ouvriers européens. Paris. 1855-1879. Contains a large number of elaborate monographs on working class families, including several in England.

Liverpool Joint Research Committee.—How the Casual Laborer Lives. 1909. Liverpool, Northern Publishing Company. 1s.

Mann, H. H.—Life in an Agricultural Village in England. Sociological Papers, Vol. I., p. 163. 1905.

More, Louise Bolard.—Wage Earners' Budgets. A Study of Standards and Cost of Living in New York City. New York, Henry Holt & Co. 1907. A detailed study of two hundred budgets.

Paton, Dunlop and Inglis.—Study of the Dietary of the Working Classes in Edinburgh. *o.p.* Contains probably the most thorough and scientific examination of food yet available.

Rowntree, B. S.—Poverty: a Study of Town Life. 1901. Macmillan. 1s. net.

The Life of the Railway Clerk. Some Interesting Facts and Figures. Prepared by Three Experienced Railwaymen. 1911. Railway Clerks Association. 3d. Gives budgets of thirty-three railway clerks.

United States Bureau of Labor. Sixth Annual Report, 1890. Cost of Production: Iron, Steel, Coal. Gives returns from 3,260 families in these industries, including 770 families in Europe.

Williams, Ethel, M.D.—Report on Children on Poor Relief. Poor Law Commission. Vol. XVIII. 1910; Cd. 5037. P. S. King & Son. 2s. 4d.

Wilson, Fox.—Wages and Earnings of Agricultural Laborers. 1900; Cd. 346. 1905; Cd. 2376.

Accounts of Expenditure of Wage Earning Women and Girls. Board of Trade (Labor Department). 1911; Cd. 5963. 5d.

Report on Cost of Living of the Working Classes in Large Towns. Report of an Enquiry by the Board of Trade. United Kingdom: 1908; Cd. 3864. 6s. Germany: 1908; Cd. 4032. 4s. 11d. France: 1909; Cd. 4512. 4s. 1d. Belgium: 1910; Cd. 5065. 2s. 2d. All can be procured from P. S. King & Son.

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THE ENDOWMENT OF MOTHERHOOD.

By HENRY D. HARBEN.

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THE ENDOWMENT OF MOTHERHOOD.

"It were good that men in their Innovations would follow the example of Time itself, which indeed innovateth greatly, but quietly, and by degrees scarce to be perceived. . . . It is good also not to try experiments in States except the Necessity be urgent, or the utility evident: and well to beware that it be the reformation that draweth on the change, and not the desire of change that pretendeth the reformation."
—BACON, "On Innovations."

The Need.

IT is one of the paradoxes of our present stage of democracy that public attention is habitually rivetted on the discussion of those questions on which men differ most, instead of on the furtherance of those measures upon which they most agree. Were it not so, the proposals that have been made in certain quarters of late years for the endowment of motherhood, for maternity pensions, or, at least, for some form of insurance against some of the initial expenses of maternity, would surely have been more favorably noticed. To raise the economic status of women by a method which would emphasize and appreciate at its full value their work as mothers of the race is an aim in which Suffragists and Anti-Suffragists, both male and female, find themselves in accord. To focus the collective energy of the State on the task of building the homes of England anew, should reconcile to Socialism those whose opposition is at present most reasoned and most sincere.

The proposals contained in the present paper are advanced from the standpoint of our present social conditions, and of the present attitude of the public towards them. There are those who believe that if we could wipe out the world and begin creation afresh we should make a much better job of it; but whether this be so or not, in any move towards political progress we have to start from where we are, and deal with the world as it is. Ideals have their value. There is an ideal state in my own mind where all babies would have the best chance of growing up into perfect men made in God's image, where all mothers would have pleasure in the beauty of their motherhood, and receive the meed of care and reward that is their due. Such a state is in my mind, such a state on this earth and in this England I believe one day may come to pass; but I have no intention of describing it. For no ideals are worth much until in our imagination we have succeeded in linking them on to the present state of things, until we have formed an idea of how we are to make for them. And it is this next step which is my humble subject here; humble, because it is small, imperfect, and somewhat uncertain; and yet not without value if it leads out of the confusion of to-day towards the saner order of a future time.

What then is the present condition of things from which, as I have said, we must start, as they affect the mothers and the children during the crisis of maternity?

Millions of our people live in poverty, and it is just at the period of child-bearing that the shoe of poverty pinches most. Not only are its effects most disastrous, but actually there are a greater proportion of our families in poverty at that time than at any other. Men or women while single can keep themselves with comparative ease. After fifteen years of marriage the elder children begin to bring money into the home to supplement the parents' earnings. Later on the children marry and are off the parents' hands altogether; and even for the helplessness of old age there is now a pension in store. But in the early years of marriage the earnings are smallest, the expenses highest, and the proportion of poverty is greater then than at any other time.* Such are the circumstances of motherhood and child-bearing in the present conditions.

The result can be measured in the figures of infant mortality, but they only tell half the tale. The holocaust of little children may have its problems for the next world, but once they are dead we have no more to do with them; it is the survivors that matter most, and though they may come out of the fire alive, they are in most cases not unscathed: they carry in one form or another through all their remaining years the heavy handicap of the conditions which environed them even before they were born, and made their coming more than half a tragedy. It is because of the survivors more than for its intrinsic importance, that it is worth while to draw attention to infant mortality—the danger signal of modern family life.

Infant Mortality.

The death rate among infants during the first years of life is still excessive, although at last it shows signs of diminishing. Owing to the advance of medical knowledge and the improvement in hygiene, the general death rate has declined during the past 50 years, but the infant death rate shows no equivalent change. The mortality of children between the ages of 5 and 10 has been reduced from 7·8 per thousand in 1857 to 3·4 per thousand in 1907, but the mortality among children under 5 has been reduced during the same period only from 67·8 to 40·9. And the mortality of infants under one year actually increased from 145 in the decade 1845-1854, to 154 in the decade 1891-1900. It has however declined to 138 for the 5 years 1901-1905, and still further to 118 for 1907.†

Half the deaths of infants under one year occur in the first three months. Three times as many babies die in the first month as in any subsequent month. Of the deaths in the first month, the greatest number occur in the first week. If babies went on dying at the same rate as they die in the first week, none would live to be a

* See this brought out with impressive effect in "Poverty: a Study of Town Life," by Seebohm Rowntree.

† Local Government Board Report on Social Conditions, 1909.

year old. Of these deaths in the first week, the majority occur on the first day.*

The chances of infant life may be thus expressed: The highest death rate is on the first day. It declines gradually during the rest of that week, falls enormously the second week, remains about stationary the third week, falls again considerably the fourth week, falls enormously in the second month, after which it continues to fall slowly during the rest of the year.

The figures vary according to locality, but, speaking generally, they are highest in mining and industrial districts, and especially where women are employed in industry. The worst county for 1907 was Lancashire with a mortality of 161 per 1,000. Nine rural counties had a mortality of under 90. The rate of infant deaths in the three worst towns is double that of the three worst counties. In 1907, Stalybridge had a mortality of 219.†

But these oft-quoted figures do not tell the whole tale, for high as the rate of infant mortality is for the whole population, the rate for the unskilled working class is far higher still. When the general infant mortality rate at York was 176, Mr. Rowntree calculated that for the poorest section of the working class it was 247.

If any person in the prosperous middle or upper class will take the trouble to compute how many babies have died in their first year of life in his own family and in those closely connected with him, he will find that this mortality does not amount to more than two or three out of a hundred births, or at the rate of 20 or 30 per thousand. In families in which adequate food and attention can be given, the infantile death rate, even in towns, is already kept down to such a figure. Here are some official statistics.

INFANT MORTALITY PER 1,000 BIRTHS ‡

England and Wales :—		
1873-1877	148	(average)
1892-1902	152	„
1907	118	„
London and ten urban counties for the same period :—		
1873-1877	161	(average)
1892-1902	165	„
1907	128	„
In sixteen rural counties :—		
1873-1877	127	(average)
1892-1902	125	„
1907	99	„

* "Infant Mortality," Dr. Geo. Newman.

† The figures for illegitimate children are of course higher than for legitimate children. In Manchester, with an infant death rate of 169 for legitimate children, the figure for illegitimate children was 362.

‡ Local Government Board Report on Social Conditions, 1909.

The nine counties with infant mortality rate under 90 in 1907 were: Dorset, Wiltshire, Hertfordshire, Berkshire, Buckinghamshire, Herefordshire, Cambridgeshire, Surrey, and Sussex.

Infant mortality in Europe 1896-1905 per 1,000:—

Russia	268	Italy	168
Austria	223	Belgium	153
Hungary	215	France	149
Prussia	196	England	147
Spain	178	Holland	144

Causes of Infant Mortality.

The principal causes of death are—

(a) In the first three months—diseases of immaturity.

(b) In the second three months—diseases of digestion, *e.g.*, diarrhœa.

(c) In the third three months—diseases of respiration, *e.g.*, pneumonia.

The deaths from these three causes are steadily increasing in proportion, in spite of the advance of medicine, which saves the lives of thousands of children in other diseases.

The causes of these three groups of disease are roughly as follows:—

(a) *Immaturity* is mainly due to over-fatigue of mothers when pregnant, coupled with under-feeding, and the sort of bread-tea-and-pickles diet in which so many women indulge, in some cases perhaps through vitiated taste, but more often the direct result of their low economic conditions.

(b) *Gastric trouble.*—Diarrhœa, which carries off so many victims in the second three months of life, is mainly the result of neglect and mismanagement; in fact, of bad mothering, due to poverty, drink, or ignorance; dirt, dirty bottles, improper food, and above all, irregular feeding, contribute principally to this group of diseases.

Epidemic diarrhœa is most prevalent in the third quarter of the year. The worst month is August. Here are the figures:

Mortality from epidemic diarrhœa:—

Rural districts generally	5	per 1,000
Wigan and Liverpool	20-30	,,
Manchester	30-40	,,
For the whole country (average) 1891-1900...	27	,,
,, ,, 1901-1906...	25	,,

(c) *Respiratory Diseases* are principally due to exposure. Leaving babies to lie in wet clothing, exposing them to sudden changes of temperature in the air they breathe, from the hot stuffy upper room to the door-step, from the warm, crowded mothers' meeting to the frosty night air outside—these things affect the bronchial tubes and lungs of a baby however well wrapped up, and claim their victims by the mass.

Present Provision for Maternity.

I have said enough to call attention to the havoc of human life and health which is being wrought under present conditions in English homes, and yet in our haphazard way there is a greal deal that we do already, both individually and collectively, to meet the needs of maternity at the present time, and in order to be in a position to grapple with the problem, it is necessary to realize just what is now being done by the State, by charity, and by individual thrift.

(a) The State aid has been so fully dealt with in Chapter III. of the Minority Report of the Poor Law Commission that it need not be explained in detail here.

In the first place there are some 15,000 babies born in Poor Law Institutions. Then there is the large number of mothers who receive medical (including midwifery) orders, sometimes with, sometimes without, outdoor relief. The number of infants under one year maintained on outdoor relief is about 5,000. The policy that governs the provision of relief and medical aid varies with the locality, and the relief when given is as a rule inadequate and wholly unconditioned, the welfare of the child not being taken into consideration.

Side by side with the Poor Law there is the intervention of the local health authorities with their provision of midwives and medical advice, in some cases even of milk. Their activities are less universal than those of the Poor Law, but the principles that guide them are more rational, aiming as they do at education rather than mere relief, dealing with the future welfare of the child rather than with the present destitution of the mother. By the establishment of health visitors alone, quite extraordinary results have been already obtained in some districts.

Now that midwives are under the statutory obligation by the Midwives Act of 1902 to call in a doctor when certain difficulties occur, local authorities often, though not always, pay the doctor's fees in such cases, and this practice will become more general.

The Minority Report lays stress on the need for a unified service for birth and infancy, and also for the co-ordination and amplification of what has already been done by the community as such.

(b) Turning to charities, there are:—

1. *The Maternity Hospitals.*—These are fewer than might be expected. There are seven in London, which in the year 1905 dealt with about 12,000 patients, or under ten per cent. of the births of London. In the rest of the United Kingdom there appear to be at least nineteen, of which six are in Ireland.
2. *The General Hospitals, including Hospitals for Women.*—The bulk of the indoor cases treated in the general hospitals are cases that have serious complications, but there are a large number of outdoor cases treated by students for the purpose of education.

3. *Nurses and Midwives whose fees are partly paid by charitable bodies.*—There are at least twenty such charities in London.

(c) There are a few friendly societies which give maternity benefits ; for example, the Hearts of Oak pays thirty shillings to the husband, and the Royal Oak Society two pounds, but most of the other friendly societies make no special provision for maternity at all.

In women's friendly societies confinements would be reckoned with other illnesses.

There are of course in existence numerous medical clubs which provide a doctor on payment of a weekly sum of money, and many slate clubs pay for doctor and midwife during confinement.*

It will be seen from the foregoing that an immense amount of care and expense is already being devoted to maternity and infancy in this country, and yet the result is as I have described above ; inadequacy, diversity, overlapping, want of system, mark all that is being done. The money spent, welcome as it is in individual cases, is largely wasted in so far as the community is concerned ; for the problem, as a whole, has not yet been faced, the enemy is still at the gates.

Immaturity, digestive disease and respiratory disease—the three main causes of infant mortality—are still sapping the fitness of the surviving population. If we are to safeguard and strengthen our race, we must roll back the attacking armies as they approach along these three main lines of advance. The critical period is the first three years of life ; the battlefield is the home.

The Community must Step In.

People must soon realize, however anti-social their prejudices may be, that home life in its old sense has been half destroyed by our modern industrial system. It is no use prating of its sacredness, and of the value of parental responsibility. Such homes as unfortunately exist by thousands in our industrial centres are not sacred ; they are blighted ; a healthy nation has no use for them ; they must be either ended or mended. In one form or another the community must interfere.

Two principles should guide our interference. The first is the simple proverbial one that "prevention is better than cure." If we are to assume, as we do assume, and have assumed for centuries back, the responsibility for the motley wreckage of human society in the form of old people, sick people, paupers, wastrels, criminals, lunatics and the rest, it is plain common sense not to let our State activity begin there, but to assert also the right to interfere with the conditions out of which this wreckage is produced.

The second principle is a financial one. Money spent on the beginning of life is more economical than money spent on the end of life. Money spent on a child is returned to the community in two ways. First, in saving of expenditure at the other end of the scale ; secondly, in the actual production of future wealth. It should

* "The Endowment of Motherhood," Dr. Eder.

be regarded as an insurance against the expense of wreckage in the future. It may also be regarded as an investment bearing interest in the shape of health, energy, intelligence and labor power in the coming generation. It is financially well worth our while to develop our children, or at least to safeguard them sufficiently to enable them to accomplish the work that lies before them in life,—whether mental or physical, whether as citizens or as rulers, whether as wage-earners or as captains of industry.

Granting the need of State intervention, what form is it to take ? Are we to replace the home by State institutions, or shall we set ourselves to build the home anew ? There is much to be said for either alternative.

State Maintenance.

On the one hand, the State maintenance of children would probably enable the physical welfare of the growing race to be most efficiently safeguarded. Plato advocated State nurseries more than two thousand years ago, and various modifications of his plan have attracted advanced thinkers of all ages since his time. In some respects modern practice in England is tending in that direction. Compulsory State schools on the one hand, and the participation of women in industrial occupations on the other, tend more and more to divest the parents of their old responsibilities and force the community to take them up. It is only a few steps in one direction from the present state of things to the complete State maintenance of children, and the practical abolition of the family as a social unit. We might have State or municipal hospitals with maternity wards to which every woman could have access, where babies could be launched into life under ideal sanitary conditions, be fed well, nursed properly, and given the best possible start. Then we might have public endowment for the encouragement of nursing mothers, side by side with public crèches into which the children would be drafted, and remain under perfect conditions of food, air and nursing until old enough to go into the public nurseries or kindergartens which would replace our present infant schools, and where physical and mental development would be carried out on a progressive system until the children were of age to enter the public elementary schools. In the schools, too, meals and games would be arranged for as at present in the upper and middle class schools. Perhaps the buildings, instead of being dotted about, would be grouped in open spaces, with playgrounds in accessible suburban spots to and from which free trams could convey the thousands of children whose homes might still be in crowded districts. And perhaps, too, dormitories could be provided for the children of those, who, like the parents of the middle and upper classes, might prefer the boarding school to the day school as affording better discipline and training of character. By some such means as these, the budding citizens could be rescued from the evils that beset them now, and home-life, already more than half destroyed by modern industry, could be supplemented and replaced out of the wealth that industry produces.

Such an ideal is well worth notice. It could easily be linked on to our present conditions ; it would strike at the root of the deterioration over which the public shed their unanimous but futile tears.

Objections to State Maintenance.

But it has two great disadvantages.

The first is on the merits. The death rate of infants, not only in workhouses, but also in well managed private institutions, compares most unfavorably with that in the homes, even of the worst districts. The Minority Report of the Poor Law Commission (pages 100 and following) shows that the infant mortality in Poor Law Institutions is between two and three times as great as in the general population ; and that this is not entirely due to mismanagement is shown by the fact given in the same report that "3,000 infants attended to in their homes—poor and wretched as were those homes—by the competent nurses of the Plaistow Maternity Charity, had a death rate during the first fortnight after birth considerably less than that in *the most successful voluntary hospitals.*" *

The following are the rates of infant mortality for first fortnight per 1,000 births.†

In four large maternity hospitals of London ...	30
For whole population	31·1
In poor law institutions of London—	
Legitimate children	47·2
Illegitimate children	46·1
In poor law institutions outside London—	
Legitimate children	51·2
Illegitimate children	53·6

These statistics must be taken with some reserve, and are not by any means conclusive ; but they point to the peculiar danger of institutions for infants which, although it is at present unexplained, we cannot afford to ignore, and they certainly justify the conclusion arrived at by the signatories to that report: "It may well be that human infants, like chickens, cannot long be aggregated together even in the most carefully devised surroundings without being injuriously affected."

On the other hand, Dr. McVale in his report to the Poor Law Commission is impressed by the admirable work done in the maternity wards in the large city infirmaries. "There could be no comparison between the comfort and safety of midwifery practised in such surroundings and that conducted in the homes of the labor classes. . . . I see no reason not to give institutional treatment."

Apart from these facts altogether the institutional solution savors too much of what a great philosopher calls "regimentation." It might tend to cut the race all to one pattern, to turn out citizens after the fashion of machine-made articles. It might tend to stifle true

* Of 3,005 infants attended at birth by the nurses of the Plaistow Maternity Charity in the mother's own home in one of the most poverty-stricken districts of West Ham, 47 died in the first fortnight, or 15·33 per 1,000 births.

† Minority Report, Part 1, Chapter III.

individualism, which it should be the aim of Socialism to enfranchise and uplift.

The second objection is one of expediency. Every step towards such an ideal as this would meet with the bitter opposition of that powerful class of opinion which wages perpetual warfare against any interference with the sanctity of home life. The ignorance of facts, terrible every-day twentieth century facts, shown by such people when they talk loosely about home life is pitiful enough, but their motive is genuine and sincere, and if this problem can be dealt with within the family instead of outside of it, by rebuilding the home instead of replacing it, the task of popularizing it will be far easier and, other things being equal, the method is preferable. There are signs that the desire to supply brand-new State institutions on hard and fast lines is giving way to the more elastic theory of State improvement and encouragement of existing conditions. The latest instance in point is old age pensions. We might have had communal almshouses on modern lines provided out of public money and not out of charity, enjoyed as a right and not as a favor, but instead of that we are pensioning the old people in their homes, and it is probably the extension and development of this policy that the future will bring.

So too will it be with the problem of the children. We have gone almost as far as English public opinion will ever go in the direction of State interference outside the home. Free and compulsory education, free and compulsory medical examination in the school, free and compulsory vaccination, free meals at the expense of the rates supplemented by voluntary hospitals, voluntary crèches, nursing systems, etc.—all these things have developed during the past generation. And yet it is not enough. The problems of health are not seriously grappled with even now. A step must be taken by the community, and taken soon, to safeguard the future race from the effects of the wide-spread disease of poverty which attacks our children by millions, spreading physical and moral devastation in each new generation ; and if I believe that the response of the community to this call will be to build the home afresh instead of replacing it, it is not that, in the abstract, one theory is necessarily superior to the other, but because the English people have always chosen to transform rather than to abolish, and because the endowment of motherhood, while it will, like all forward steps, be first urged upon the community by Socialists, will command the support of those whose opposition to Socialism is based on the extraordinary error that its aim is to destroy the home.

The Scheme.

The need of State action has now been sufficiently emphasized, so too has the economic wisdom of it. Reasons have been adduced to show why such an action should be brought to bear *within* the home and not outside of it. Starting with these premises and bearing always in mind present conditions and the present state of public opinion, we have now to consider what scheme is possible.

The first step must be the establishment of a system of complete public provision for all the extra expenses incident on maternity.

Medical Attendance.

First and foremost comes the need for qualified medical and nursing attendance on the mother and the newly born infant. At present many mothers go almost unattended in their hour of need; many tens of thousands more have attendance that comes too late, or is quite inadequately qualified; hundreds of thousands of others fail to get the nursing and home assistance that is required to prevent long-continued suffering and ill health to mothers and children alike. This lack of qualified midwifery attendance and nursing will become even more apparent within a year or two, when the provisions of the Midwives Act come fully into force, and none but certificated midwives are allowed to practise. The local health authority ought to be required to provide within its area qualified medical attendance, including all necessary nursing, for all cases of childbirth of which it has received due notice. There is no reason why this should not be done as a measure of public health, free of charge to the patient, in the same way as vaccination is provided for all who do not object to that operation; and on the same principle that led to the gratuitous opening of the hospitals of the Metropolitan Asylums Board to any person suffering from particular diseases quite irrespective of his means.* What is, however, important is that the necessary medical attendance and nursing shall *always* be provided. If the community prefers to recover the cost from such patients as can clearly afford to pay—say, for instance, those having incomes above a prescribed amount—instead of from everybody in the form of rates and taxes, this (as with the payment for admission to an isolation hospital) may be an intermediate stage. In one way or another, there must be no childbirth without adequate attendance and help to the mother.

Pure Milk.

We have next to consider the need of sustenance, both of the mother and of the newly born citizen. At present many tens of thousands of these infants perish simply from inanition in the first few days or weeks after birth. In town and country alike many hundreds of thousands of families find the greatest difficulty, even when they can pay for it, in buying milk of reasonable purity and freshness, or in getting it just when they require it, or often indeed in getting it at all. The arguments in favor of the municipalization of the milk supply are overwhelming in strength.† But an even stronger case can be made out for the systematic provision by the Local Health Authority, to every household in which a birth has taken place, of the necessary quantity of pure, fresh milk, in sealed bottles, delivered every day. Whatever else is left undone, the

* Diseases Prevention (London) Act, 1883; Public Health (London) Act, 1891.

† See Fabian Tract No. 122, "Municipal Milk and Public Health."

necessary modicum of pure milk, whether taken by the mother or prepared for the child, might at any rate be supplied as the birthright of every new-born citizen.

These two measures—the universal provision of medical attendance and nursing and the universal provision of milk—would go very far to meet by the co-operative State organization represented by the local health authority, the actual extra expense which a birth causes to the average household. But the provision cannot be deemed complete unless an independent provision is made for the maintenance of the mother during the period for which she ought, in the public interest, to abstain from work.

Maternity Pensions.

The next step therefore must be the establishment of a system of maternity pensions on somewhat similar lines to the old age pensions, which, after much promising, have at last arrived.

These maternity pensions must be free, universal, and non-contributory, for reasons which are familiar to all who have followed the controversy over old age pensions. If they be not universal, they will come as of favor, and be open to the objections rightly urged against all doles, public or private. A contributory scheme could only exist as part of a universal sick fund, and State insurance would be a new principle in this country.* If the contributions were optional, the poorest mothers would get no pension at all. If they were compulsory on a fixed scale, the scheme would still further impoverish those it is intended to benefit. If the contributions were on a sliding scale, the pension would be smallest just where it is most necessary.

Four questions immediately arise:—

How much is the pension to be?
How long is it to last?
How is it to be administered?
What would it cost the community?

The amount of the pension will of course depend upon the view taken by the community of the purpose it is intended to serve.

To work out a pension scheme, for instance, on the basis of compensation for loss of the mother's earnings would at once involve a sliding scale such as is in force in Germany and Austria, which would be unfair in the working, and benefit the poorest least. Moreover, the theory is fallacious, inasmuch as it views the woman as a worker and not as a mother. Let the pension be regarded rather as the recompense due to the woman for a social service, second to none that can be rendered. The time will come when the community will set a far higher value on that service than it does at present, and will extend the moderate pension scheme here proposed into the full endowment of motherhood. But at present the main point is to tide the mother over a time of crisis as best we may.

* Should the State, as seems likely, inaugurate a scheme of sick or unemployment insurance in the near future, such change in the premises from which the argument starts would, of course, carry with it the necessary modification of the argument itself.

On the one hand then it can be argued that any sum, however small, would be a relief in many cases to the pressure of want. On the other hand, it could fairly be urged that at such a time no reasonable sum, however large, would be wasted, so many are the extra needs of the mother and the new-born child, so all-important to the future is their full satisfaction. For the purposes of this paper, I suggest that a middle course be adopted, not because it is a middle course—for the golden mean is often the worst course of all—but for the following reasons. Too small a pension is uneconomic; unless it secure to some extent the object in view, the expense would not be worth while. Five shillings per week for a month would be money thrown away. On the other hand, a large pension extending over a long period, say, one pound per week for nine months, would cost so much that public opinion would not seriously consider it, and given the present standard of life, it is quite likely that much of it would be wasted. Let us begin with a sum far less than will be provided eventually by a far-seeing and progressive community.

I suggest, therefore, ten shillings per week as being ample to cover the proper maintenance and feeding of an ordinary working-class maternity case. The cost of a maternity case in Queen Charlotte's Lying-in Hospital for provisions alone works out at 7s. 7d. per week. But food can of course be bought by a hospital in large quantities, and therefore at a much lower price than would be possible to a private family.

How Long should the Pension Last?

The average duration of a maternity case inside a hospital appears to be a fortnight. The statutory minimum of nursing under the Midwives Act is ten days. The normal period during which upper class mothers keep their beds is three weeks, but for some time after leaving bed, the mother is incapable of any active work without harm to herself. Many internal diseases and nervous complaints, as well as a good deal of the drinking among women, have their origin in getting about too soon. For some weeks at least, whether the mother nurses her baby or not, she requires much more than ordinary rest and nourishment. These considerations apply also, though in a less degree, to the period preceding confinement.

Under the law of Great Britain, the period of enforced cessation from factory work is four weeks. The same period is prescribed in Holland and Belgium. In Switzerland the period is eight weeks.

These laws, though of great value, are often cruel in the working, as they deprive the woman of wages without compensation just at the time she needs money most. The result is they are often evaded. Germany and Austria have recognized this. In Germany women are forbidden to work for six weeks after confinement.* But the insurance law of Germany provides women with free medical attendance, midwife and medicine, and in addition with an allowance not exceeding seventy-five per cent. of her customary wage for the

* The period may be reduced to four weeks on production of a medical certificate.

six weeks. There is further a provision that pregnant women unable to work should be allowed the same amount for not more than six weeks previous to confinement. A similar insurance system exists in Austria and Hungary. In some parts of Germany, the municipality goes still further. In Cologne, the working mother is given a daily grant to stay at home and suckle her child, and visitors see that this condition is fulfilled. The Cologne system has been adopted by some municipalities in France. In Leipsic, every illegitimate child becomes a ward of the municipality, which puts it out to nurse with certified persons who must produce it for inspection on demand.

These provisions enable the government of Germany to enforce the law against the employment of women in the last period of pregnancy without hardship to them, and only when some such measures are adopted in England will our law cease to be evaded, and become a real safeguard instead of a dead letter.

The compensation given to German mothers, though far in advance of anything we have in England, is already felt to be insufficient, but there is a difficulty in making it more generous arising from the fact that the system is a scheme of insurance; the benefits cannot be increased without a rise in the contribution. In a free pension scheme, this difficulty will not occur. A small beginning might be made by way of experiment to familiarize the public with the advantages of caring for maternity, with a knowledge that its scope could be extended indefinitely without dislocation of the scheme.

But the period like the amount must be substantial even at first. If the pension is to have any permanent value it should extend, I suggest, over a period of at least eight weeks: about two weeks before and six weeks after the date on which the birth is expected to take place. I attach no importance to the particular period of eight weeks, which must be regarded as a rough minimum chosen to afford a basis for preliminary calculation of the cost of the scheme to the community.

The Scheme in Working.

The pensions might be administered on the following lines, to the details of which no particular importance need be attached.

The first payment should be made a fortnight before the anticipated date of confinement, on condition that the recipient was not at this time engaged in any occupation likely to prove injurious to her health or to her offspring. Most women would willingly comply with this condition could they afford to do so.

Application should be made at least a month before the first payment.

If, as I suggest, the scheme were accompanied by free nursing and supervision, the case would at once be placed in the hands of the nurse in whose district it fell, who would pay a preliminary visit to the applicant's home, arrange with her as to the best place in the house for the lying-in, and give her good advice as to care and diet.

If any symptoms were unsatisfactory, the applicant would be advised to see the medical officer. Special cases could then be scheduled and watched. Difficult and abnormal cases could be removed to the infirmary in good time where they could be treated more conveniently than in the home, and where recovery would be more rapid. In such a case, the pension, or part of it, would presumably pay for the patient's treatment in hospital. In serious cases it might be possible, on the report of the medical officer, to make grants for extra nourishment, even before the pension became due, and in the same way to keep cases of slow recovery furnished with money longer than the prescribed eight weeks.

There would be no need to tie a patient down to a particular doctor and nurse, provided the persons chosen by the patient were approved of by the pension authority.

Women would be encouraged to make their application as long before the statutory month as possible. At first they would not wish to do so ; but in a few years, and especially in first pregnancies, many young mothers would come to feel that they had somewhere to go for advice, and would seek out the pension authority early. Much folly would thus be avoided. The mere handing of a one-sheet pamphlet of elementary rules of health to each applicant would not be without its effect in removing some of the ignorance that at present prevails. The women would talk it over on their door steps and in their courts, and gradually the old wives' tales and remedies would give way to a few tags of sound hygiene.

The pension authority would, as tactfully as possible, use the pension as a lever to promote a higher standard of health in the applicant's home. For instance, as regards overcrowding, if it transpired at the preliminary visit that the only room available for the confinement was one in which not only the woman and her husband but also several children slept, temporary arrangements could be insisted on for the reduction of this number during the receipt of the pension. For a small sum per week, which the pension money would far more than provide, accommodation could be obtained for most of the family elsewhere in the same house, or at least in the same street. Both the mother and baby would thus get a national minimum of air for the time being, and in the course of time, a higher standard of opinion would be set up in the matter of house room, and the way be paved for future reform.

There are numerous other ways in which the local authority might, through the medium of the pension, increase the standard of health. If it be true, as the experts tell us, that breast feeding is all important to national health, then special advantages might be offered to nursing mothers under the scheme.

Supposing a fee for the requisite nursing and medical attendance were charged and deducted from the pension, mothers would still be better off than at present, but if the nursing were free, as suggested above, the cost that would be added to the pension scheme would be compensated for by a considerable saving in our present voluntary machinery.

Each case, as I have said, would be in the hands of a certificated nurse, but much of the routine work could be performed under the direction of the nurse by less skilled women who would play the part of mother substitute as well, for the medical aspect of the case is by no means the most important. When the mother of a family is laid by, few workmen can afford to pay for extra help, and so the children are neglected, go to school unwashed, with dirty clothing, and unbrushed hair, and without properly cooked meals at home. Under the pension scheme, as is the case even now in many country districts under private nursing institutions, a mother substitute, or a pupil nurse, could be provided to be manageress to the family during the first three weeks.

What would the Scheme cost ?

First, as regards the provision of nursing and medical attendance, with the necessary supply of milk.

The cost of nurses varies according to density of population, cost of living, etc., in the various localities. Moreover, in some districts, the average duration of labor is three or four times as long as in others ; the cases in such districts require far greater attention during recovery, occupying more of the nurse's time, and therefore costing more. In some town institutions, medical and nursing expenses work out at only 10s. a case, while in some unions and hospitals the out-door cases are reckoned at 15s. a case. We are told that the State does things expensively, and certainly its standard should be as high as that of the best poor law or charitable administration in a matter of this kind ; so we will take this last figure as our estimate, and adding thereto the cost of milk for eight weeks, at perhaps another 15s. per case, we shall arrive at an outside figure of £1 10s. per case for nursing, medical expenses, and milk.

Now, as regards the cost of pensions.

The total number of births in the United Kingdom for the year 1907 was 1,148,573. Some of these of course were twins, or even triplets. In such cases I do not suppose a full 10s. would be given for each child. More probably it would be decided to augment the pension by a small sum, say only 2s. 6d. per week extra, for each additional child ; but this is a mere matter of detail, and need hardly enter into our rough calculation. Without making any allowance for this, the pension of 10s. per week for eight weeks on the basis of the 1907 figures would involve a cost to the community of £4,600,000 per annum. If ten per cent. be added for the extra cost of special cases, we get £5,000,000 as the outside cost of pensions. With the addition of £1,750,000 for the cost of provision of nursing, medical attendance, and milk, the total is £6,750,000.

If the pension were paid through the existing old age pension authority, the cost of administration would be almost negligible.

But this is only the gross cost. From it must be deducted a sum for non-claimants, the number of whom would depend on how far the scheme were accompanied by inspection and other requirements which would keep off those who did not really need it. Speaking

roughly, we may take it that the servant-keeping class would not be likely to apply for the pension. This class was estimated by Mr. Booth at 11·3 per cent. in London, and by Mr. Rowntree at 28 per cent. in York. It is reasonable to suppose that at least 20 per cent. of the mothers would not apply for pensions under the scheme suggested, in which case the amount to be written off under this heading would be £1,350,000, leaving a total of £5,400,000.

This expense, which in round figures may be described as five and a half millions of money, would be accompanied, of course, by a considerable saving in three directions : i. the rates ; ii. charity ; iii. friendly societies, etc.

i. If the estimate I have quoted above be correct, namely, that fifteen thousand children are born every year in poor law institutions, and five thousand infants under one year subsist on outdoor relief, it is evident that from the cost of the scheme there must be subtracted the expenses under this head.

In England and Wales, the proportion of illegitimate births in workhouses is estimated at seventy per cent., but there is a growing tendency among respectable married women to use the workhouse as a maternity hospital. This tendency would undoubtedly be arrested by the pension scheme now proposed, but the great bulk of the maternity work under the poor law would probably continue because it deals with those without homes, casuals, illegitimate cases, etc. These persons would be relieved as at present, but the expense, instead of falling on the rates, would be defrayed out of the pensions to which they, in common with the rest of the community, would be entitled.

ii. There would also be an enormous saving in the expenses of hospitals, nursing institutions, and other charitable agencies.

The general hospitals take in cases with serious complications and treat outdoor cases for the purpose of educating their students. This would continue as at present and work in with the scheme, the hospitals being paid for the work done out of the money voted for the maternity law. Thus their sphere of usefulness would probably be enlarged and their finances at the same time relieved.

The lying-in hospitals would find that some who at present used them would, under the pension scheme, prefer to remain in their own homes ; but the more complicated cases, which now remain ill-attended at home, would be removed under doctor's recommendation to the lying-in hospitals, which would thus find their activity increased and their work paid for. Over nine per cent. of the births of London are treated by lying-in hospitals at a cost of about £25,000 a year. Under this head alone then this sum would be saved to the charitable public of London every year and be liberated for use in other ways. Similar amounts would be saved in other centres.

As for the nursing institutions, their great work would at last be nationalized, or, if the institutions remained under private management, the nurses they provide would be paid for by the community for the cases they attended.

It is impossible to estimate what the saving to charities would be without far fuller details as to the expense of hospitals and other charitable agencies than I have found it worth while to obtain ; but if the saving under this head is less than might be supposed, that is only another way of saying how inadequately maternity is provided for under our haphazard charity system, which does not, indeed cannot, attempt to cover the whole ground.

iii. Lastly, there would be a small saving in the benefits given for confinements by thrift societies and clubs. The money would be thus liberated for fuller benefits in other directions.

Objections to the Scheme.

A host of objections present themselves to the mind against the scheme I have outlined. They may be divided into two heads—practical and theoretical.

The first practical objection will come from enthusiasts who will say that 10s. per week is not enough : it will not replace the wages in many cases, much less afford the extra comfort and nourishment required at such a time.

But the fact is that the better-class working woman who is earning more than 10s. per week is not likely to be so near the poverty line as her poorer sister, and the pension, though acceptable, is not so absolutely vital in her case. The 10s. will be all to the good for her, while for the very poor it will more than replace anything they could earn, and will go some way at least towards securing that national minimum of comfort at a time of crisis in the life of the individual and of the community which is the main purpose it is intended to serve.

Another objection is that in many households the 10s. may not be spent on the mother and the baby : the husband would drink the money. My belief is that these cases will be far fewer than is often supposed. Even rich people, if they found themselves in such a position that they could not rely on a future more than a few days ahead, if they lived in a world of destroyed illusions, where memory is all and hope has little place, would probably do much as the very poor do ; they would drop calculation and let things slide. But give the poorest even eight weeks during which they can see their way clear, and they will feel less helpless, they will derive a stimulus from the new sensation, they will behave more sensibly. Still the objection has force none the less, and be the cases few or many, they must be guarded against. The nurse will see at once how the land lies, and acting on her report, the local authority should schedule the case, and pay the pension in kind through the nurse, or through inspectors or health visitors, whose business it should be to look after such cases. The difficulty is there as in the case of out relief. It has to be met, but it is not insuperable. It would be ridiculous to deprive the whole nation of a beneficial scheme just because there are rogues about.

Another difficulty I clearly foresee is that of arranging the staff of nurses, doctors, etc., so long as the hospitals and medical schools

remain in private hands. As things are at present arranged, there would inevitably be overlapping and jealousy and undue expenditure. Indeed, if overlapping is not now apparent, it is merely because there is no attempt by voluntary agency to cover nearly the whole ground, which is strong evidence of the need of the scheme. But the time is not far distant when the health services will be socialized, and the first beginnings of a far humbler scheme than that mentioned in the present paper would tend to hasten the event.

Finally, there is a powerful theoretical objection to any scheme which lessens the burden of maternity, namely, that it will tend unduly to increase the number of births amongst the poorest classes.

Three considerations must be urged in answer to this :

(a) The poorest classes already breed almost as fast as they can, faster than any other part of the community.

(b) The tendency of parents is to become more prudent in proportion as they have more chances in life and a better position to lose.

The more comfortable working classes, as represented by members of friendly societies and trade unions, for instance, have not, on the average, so many children as the unskilled laborer.*

(c) In Germany, where compensation, fifty to seventy-five per cent. of the wages lost, is paid to the mother, this payment for confinement, so far from increasing, is a diminishing proportion of the total sick pay.

But it is possible that, apart from increase of births, there might, or indeed there probably would be, an increase of population due to the reduction of infant mortality. This is not necessarily an evil. Whether it is so in fact or not depends wholly on the character and quality of the increased population. Surely an increase due to causes that make for a higher level of health all round cannot be said to be an evil except by those who are haunted by the ancient bogey of over-population.

Our object is not to increase the population, but to obtain a national minimum of health for the race. What though this incidentally increase the population, too? If the future race is only sufficiently healthy and efficient, over-population will be no danger to it. It will not allow the few to displace it, to monopolize the land, to pin it into slums, and to live upon it ; but it will claim its heritage, it will survive in the struggle for existence, it will be fruitful and multiply and replenish the earth, replacing, if need be, more effete and less healthy peoples. The modern topsy turvey view of a child as an expense, instead of a source of wealth, will not survive the economic disorganization from which it springs.

Advantages of the Scheme.

Over against all such objections there stand out clearly the advantages to the whole nation of such a scheme as I have outlined.

* See Fabian Tract No. 131.

To the individual these advantages are obvious. They may be summed up as follows :

1. Money at a time of crisis in the home. As Bernard Shaw has truly said, "What is the matter with the poor is poverty."

2. Health to the mother and the child consequent upon the increased care and attention at that time. Moreover, the mother would be saved many of the future consequences of bad recoveries. Thousands of women take to drink at first purely to gain temporary relief from ailments consequent upon unhealthy conditions of motherhood.

3. The husbands would be saved much worry and expense due to the incomplete recoveries and ill-health of their wives.

4. Above all, there would be increased affection between the mother and child springing up in the golden days of rest that will replace the present nightmare of worry, affection that will bear priceless fruit in the home life and conditions of the future.

Great as the boon would be in individual cases, the advantages to the community would be greater still. In the first place, the rate of infant mortality would be reduced, and at the same time would disappear the degeneration of the children that survive. It is impossible to over-rate the value of the health lessons that would be received in the home during the regular visits of the nurses. Little by little, closed windows, dirty bottles, "comforters," ignorance of management and feeding, wanton exposure of children, and the hundred-and-one details that go to pile up our figures of mortality and disease and leave their legacy of trouble and expense to the survivors, would disappear before the method and common sense of a more enlightened generation. Once establish your national minimum in so important a sphere of life as child-bearing, and the seed is bound to grow. It will develop into full endowment of motherhood, and bear fruit in the ever-increasing freedom and health of the coming race.

"Superfluous Women."

In the second place, there seems every reason to believe that with healthier conditions the present disparity of number between the sexes would also disappear. In 1907 there were living in this country 16,879,509 males and 18,066,091 females. This excess of females is not due to an excess at birth, for there are always more boys than girls born, the mean proportion for the decade 1897-1906 being 1,037 boys born for every 1,000 girls. It is due simply to the fact that male children succumb more readily to the dangers that await them in infancy. The proportion of deaths to 1,000 births in 1907 was as follows :—

Under 1 day	-	12·90	males and	9·71 females
„ 1 week	-	14·78	„ „	11·26 „
„ 1 month	-	46·17	„ „	34·98 „
„ 1 year	-	130·26	„ „	104·49 „

The death-rate under 5 years per 1,000 living was 44·77 males to 37·02 females.*

* See Registrar-General's Reports for England and Wales.

Now, as these infant deaths arise largely from causes that are preventible, and are more active in urban than in rural districts, it follows that the present ratio between the sexes is abnormal, and would be modified by legislation of the kind proposed.

Although this scheme was drawn up before the appearance of the Minority Report of the Poor Law Commission, and although Maternity Pensions are not suggested there, yet I venture to think there is nothing in the scheme inconsistent with the principles underlying that report, or with the facts and figures contained therein. Indeed, it would seem to fulfil completely two conditions upon which the Commissioners lay great stress; first, that the service of birth and infancy should be unified, and secondly, that the normal place for the mother and the child is the home.

It has often been urged that the endowment of motherhood would tend to facilitate early marriages, and in this way prevent much misery, immorality and disease consequent upon the economic impossibility of recognized relations between the sexes at a time when the passions are strongest. I do not think the present scheme would achieve this. It would hardly touch the middle classes, and among the poorer classes of the community, which it would undoubtedly benefit, marriage is already embarked upon at a sufficiently early age.

Conclusion.

One word in conclusion. Twice, and twice only, in modern history, according to Dr. Newman, has the mortality of the little children of the working classes been sensibly reduced. Once was during the cotton famine in Lancashire, the other was during the siege of Paris. In both cases, poverty and privation sent up the general death rate whilst reducing infant mortality, in Paris by as much as forty per cent.*

The paralysis of industry spelt life for the race. Why? Because the parents were at home and the children had their meed of care and kindness.

What does this mean? It means *that we buy our industrial wealth at the price of our national health.*

We are, in fact, living on capital all the time. Financiers refuse to see this. They calculate in terms of money, and dub the rest of the world sentimentalists; but human life, human labor, are not sentimental, but material, considerations, and social problems are not antagonistic to, but essentially a part of, sound finance. The civilization that survives will be that which takes the social items into its account. This can never be done while the two sets of items are in different hands, while the profits of industry are swept into private coffers, and the wreckage and waste of capital is made good out of the public treasury.

Every step taken by the public towards assuming responsibility that is theirs brings the day nearer when in self defence they will

* Dr. Newman, "Infant Mortality."

insist on drawing up a national balance sheet of their own on sane lines. And there is, I venture to believe, no responsibility at present neglected which they ought in common sense to assume before that of the mothers and the little children, the breeding ground of ages long past, the infinite potentiality of the super-race that is to be.

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"Votes and Wages."

By A. Maude Royden.

Over 5,000,000 women are earning their own living in England to-day.

The vast majority of these belong to the working classes. About half* are "industrially employed," earning a weekly wage.

The average weekly wage earned by the industrial woman is about 7s. or 7s. 6d. a week.

It has been estimated at anything between 7s. and 7s. 7d. Miss Mary Macarthur, in her evidence before the Select Committee on Home-Work (1907) estimates it at 7s.† for all except the most highly skilled ‡; 4s. 6d. for the home-worker §; and, elsewhere, 7s. 6d. for the average throughout, including the best and the worst paid.‖

It will be observed that higher estimates sometimes given invariably refer to special industries, and not to all, or are taken from the "full-time week's wage," *nominally paid*, without regard to slack seasons, short time, sickness, and the iniquitous "fines" which so terribly reduce the sum *actually received* by the worker. In order to estimate the effect of these upon the average, not only a theoretical but a practical knowledge of the lives of industrial women is necessary. This Miss Macarthur possesses, and she says¶: "I am in general agreement with the evidence given by Miss Squire and Miss Irwin and Miss Tuckwell, on the rates of pay" (*i.e.*, among sweated workers).

On 7s. 6d. a week it is not possible for a woman to keep industrially efficient. She cannot keep her physical health, let alone the qualities of intelligence and mental vigour which make the valuable citizen.

It is exceedingly difficult for her to keep alive.

These facts, alone, have made thousands of women Suffragists. They will make Suffragists of all men and women who consider what they mean in suffering—and in sin.

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* The exact numbers cannot be known until the publication of the 1911 Census Returns, but we give the estimate of labour experts.

† p. 139, § 2753.

‡ p. 134, § 2700.

§ p. 139, § 2754.

‖ "Women in Industry," p. 66. "There are unfortunately no reliable statistics as to the average wages earned by women-workers, but, speaking from a large experience, I estimate that the average wage of the manual woman-worker, taking into account slackness, sickness, &c., is certainly not more than 7s. 6d. weekly all the year round. The comparatively high average of the textile trades . . . . is included in my estimate, as is also the wage of the East-End home worker."

¶ Select Committee on Home-Work, p. 134, § 2696.

What has Women's Suffrage to do with it?

Nothing at all, say the unconverted. Women's Suffrage can have no effect at all on the economic position of women. Politics and economics have no connection: votes and wages nothing to do with each other.

On what, then, do Wages depend?

Suffragists would reply—"On many things; *among others*, on political power and the forces of legislation." Anti-Suffragists generally state with simple confidence—"*Wages depend on demand and supply.*"

Let us assume for the sake of argument that this is the whole truth. Wages depend (solely) on demand and supply. Women's wages are low, because there are so many more women in the labour-market than there is work for them to do. They are unable, for lack of strength, to do the heaviest kinds of work; so they crowd into a few professions or trades, and wages are low. But observe.

Demand and Supply can be, and are, affected by Legislation.

Women are kept out of more careers than those for which they are physically unfitted. They are kept out of many employments, either by law, or by custom which can only be broken down by law. For example, women cannot hold any high office in the State (except that of Sovereign): they are shut out of the diplomatic service: they may not be barristers: with extreme difficulty they won the right to be doctors of medicine, and still very many posts are closed to them. There are (*e.g.*) over 2,000 certifying surgeons who are responsible for the medical examination of girls before they can be employed in factories. None of these are women.* Again, in Government schools the headships of mixed schools are reserved for men. Out of 151 factory inspectors,† only eighteen are women, and there is "no immediate prospect of adding to their number." It is with increasing difficulty that women can get sanitary-inspectorships, the less responsible, and worse paid, post of "health-visitor" being thought good enough for them. Indeed, throughout the public service, the rule holds that the best paid and most honourable posts are to be reserved for men.

These restrictions, it will be observed, are artificial restrictions. They *cut off the demand* for women's work in the highest professions, and *increase the supply* in the less skilled and less well-paid work, by forcing more women to look for employment there.

Moreover, attempts have been, and are being, made to drive women out of other than professional work. At one time, 100,000 barmaids are threatened with dismissal: at another, it is 10,000

* Departmental Committee on Employment of Children, p. 239.

† Cadbury: "Women's Work and Wages," p. 266.

women acrobats. Then the women on the pit brow are to go: or married women are to be allowed to work in factories only on such conditions as would make it not worth the while of any employer to take them on. According to Mr. John Burns, the work of women must, in the future, "be greatly curtailed."*

All this is to be done by direct legislation: and all without an attempt to provide for the women thus thrown out of work. Since they *must* work in order to live, they must seek employment elsewhere; and since they are told (and know) that their low wages are largely due to the fact that the trades open to them are already overcrowded, it is no wonder that they regard with terror the attempt still further to restrict the field.

It must be observed also that these attempts to keep, or to drive, women out of certain trades are by no means confined to "unwomanly work." On the contrary, the heaviest kinds of laundry work which would tax the strength of men, the sorting of refuse, cleaning fish, picking fur, and other hard or disgusting forms of labour, are freely permitted them; while efforts are repeatedly made to forbid them work which used to be regarded as essentially "womanly." The arts of the housewife—brewing and baking, spinning, weaving, knitting and dyeing, the making of garments, the making of soap and candles, of medicines, and salves—all these were once the work of women in their own homes. They have been removed to the factory, and when the women, impelled by necessity, seek to follow them there, they are met with indignant protests by the men, and by an appeal to legislation to keep them out.

Yet no attempt is made to give protection to the women in the few trades still left to them. No one forbids a man to enter any profession or trade that pleases him. He may be a sick-nurse, a dress-maker, a milliner, or a cook; and the London County Council is at this moment providing three years' courses in scientific cookery for boys, to fit them for the highest posts; while the girls must be content with a short course of three or six months, and (consequently) with lower wages when the training is over.

Parliament decides what industries women shall engage in, and under what conditions.

That is to say, these things are decided by men, for men alone are represented in Parliament. A moment's thought will show the unfairness of this. Women want well-paid and agreeable work, of course; so do men. But men alone have power to decide, if necessary by direct legislation, what work women shall be allowed to do, and under what conditions. This puts both in a false position,

*Note also the demand of the Nat. Soc. of Brassworkers and Metal Mechanics for legislation against the employment of women, "in order that men's wages might be increased, and they might be rid of unfair competition, and that employment might be more regular." Speech at a Mass Meeting in Birmingham, Feb., 1912.

which no honourable man would consent to occupy in an individual case. If Jones and Smith both wanted a post, would it be fair to ask Jones to decide whether Smith's strength and skill were equal to the work, and whether it was the kind of work it would be good for Smith to do? Would not Jones himself refuse to be made judge in his own case? Yet this is the position between men and women to-day, and men keep on deciding that the best paid and most honourable work is beyond the powers of women, or in some mysterious way, "unwomanly." It is probable that women would decide with the same unconscious selfishness if they had supreme power over the destinies of men. Only when both are represented will it be possible to get a fair decision.

Moreover, men decide, by their votes, under what conditions women shall be allowed to work. And these conditions are sometimes made so stringent that it is not worth an employer's while to take women on at all. This may be done in ignorance or it may be done deliberately. In either case, the demand for women's work is again cut off, without their advice being asked or their wishes consulted.

Finally, we are not arguing the goodness or badness of any special piece of restrictive legislation; we point out only that this is certain:—

(1) *The demand and supply of women's labour can be, and has been, affected by laws.*

(2) *And laws are made by people with votes.*

(3) *Therefore, if wages are regulated by demand and supply, wages also are affected by votes.*

But the efficiency of the worker is also a powerful factor in deciding the rate of pay.

Women, we are told, earn less than men, because they are worth less than men

Why, then, do women get less when their work is exactly the same? Postal employees (clerks, sorters, telegraphists, &c.), women-teachers, even women sick-nurses, get less than men. In the last case, the greater physical strength of the male nurse makes him sometimes necessary; but surely this is not more than the equivalent in money of the longer training and higher skill of the woman. Even in domestic service, when the potent influence of demand and supply has forced up the wages of women, they are still far short of those given to men-servants, though these, as every housewife knows, do not one-half the work.

Still, we shall all agree that the efficiency of the worker does *help* to decide the rate of pay. And

Political Power can be used to Increase the Efficiency of the Worker.

At present, it is very difficult, and in some cases impossible, for women to obtain the technical training which converts the

unskilled into the skilled worker. Under the Act creating Technical Education, every trade class is shut to any student who is not working in that particular trade. In many trades, though women may be largely employed, they are not technically "in the trade," owing to the refusal of the trades unions to admit them to apprenticeship. Hence they are excluded from the technical classes provided by Government, and it is impossible for them to attain a high degree of skill. This is the case in the book-binding industry, silversmith's work, the better class of tailoring, and many others; even in some branches of the textile trades; and it constitutes an almost insuperable obstacle in the way of women who wish to become really skilled workers.

These restrictions with regard to technical classes have been created by Act of Parliament, and can only be removed by Act of Parliament, *i.e.*, by votes.

Moreover, it is well known that the amount of public money spent on the secondary education of boys vastly exceeds that spent on girls.* And this is true in a less degree of elementary education also. It would be a miracle if the average girl were as efficient as the average boy thus educated. Even for the trades supposed to be "naturally" theirs, women can get little or no scientific training. People demand indignantly why servants are not more plentiful and more intelligent: but no systematic effort is made to offer women the thorough and scientific training which would enable them to do such work well, and (consequently) to find it interesting. As for laundry work, that refuge of the married woman, or the widow, in straits, "washing is one of the things that most women are supposed to do by nature."†

With political power, women could insist on a more equal expenditure of money on the training of boys and girls, in the schools which their taxes go to support.

Organisation into Trades Unions is also regarded by some as the whole cause of the higher wages of men as compared with women. Women, we are told, should organise and raise their wages by force of combination.

But women *have* organised themselves into trades unions. There were 201,000 women in trades unions in 1909—more than there were men in 1867, when they received the vote. Yet in all these organised industries, women get a very low wage as compared with men.‡ They realise, as the men have realised, that a union without political power is very little use. The men always made the vote the first thing to fight for, though at first they saw no

* See "The Economic Journal," March, 1910. "True Cost of Secondary Education for Girls," by Ruth Young.

† "Women's Work and Wages," Cadbury, Matheson, and Shann, p. 106.

‡ The single exception to this rule is found in the weaving-sheds in Lancashire. Here women get the same rate as men, *because they are in the men's union, and have its power behind them.*

need for direct representation in Parliament. Now they assert that to lose this would be to "leave trade unions helplessly exposed to the attacks of capitalism, through industrial combinations of capital, through political combinations of capital, and through the action of capitalism in the law courts. The trade unionist who refuses to combine politically with his fellow-workers in these days is just as much a danger to his own class, just as ignorant of what is essential to his own class, as the non-unionist workman. A political Labour Party is just as necessary a part of trade unionism in these days as a strike fund has been in the past."* In the face of this, it is useless to persuade working women that their trade unions can do everything for them without so much as a single vote among them.

Moreover, though the skilled women-workers are organised, the vast majority are unskilled, and the unskilled worker cannot organise.† No men have ever succeeded in doing so, nor can the women. The unskilled worker cannot strike, for his post will instantly be filled: he cannot form a union, for he has no money. Nine-tenths of the sweated work of this country is done by women. To ask a sweated woman, without means, without skill, without leisure, and without hope, to organise a trade union, is to mock her. If it has ever been done, it has been by the outside help, brains and money of more fortunate women and men. It *cannot* be done by the sweated workers themselves.

These arguments of demand and supply, efficiency, and trades unionism are the stock-in-trade of the Anti-Suffragist. Being shown that political power affects them all, he falls back on the statement that

Men are paid a higher wage because they have people dependent on them, whereas women have not.

This is a grotesque mis-statement. Many men have no families to support, or refuse to support them; they are not paid the less. Many women have families to support: they are not paid the more. In the opinions of those who know working-class life the best, it is a rare exception to find a woman who has only herself to support, and anyone can verify this by putting the question at any gathering of working-women or girls, or asking their own domestic servants.

In one city,‡ certain charing work in the municipal buildings is specially reserved for widows with children. Most of them get the noble sum of 14s. a week. Some who have been there for a less number of years get only 12s. Having twice applied for a rise, they have been twice refused. Twelve shillings a week is considered enough for a woman *with a family to support.*

* Philip Snowden, in "The Christian Commonwealth" August 24th, 1910.

† Miss Gertrude Tuckwell, Chairman of the Women's Trade Union League (over 100,000 members), says to organise sweated workers is "absolutely impossible." Select Committee on Home-Work, p. 114, § 2333.

‡ Liverpool.

But the problem has not really reached the point at which it may profitably be discussed in this manner. It is not a question whether women shall have as much as men with families to support; it is, as already stated, whether they are to have enough to support themselves. Miss Mary Macarthur* estimates 15s. a week as "certainly not too high" a wage on which to keep a woman industrially fit. Yet the average wage is 7s. 6d. Some women get much more than this, it is true.

What, then, are others getting to bring the average down to 7s. 6d.?

They are getting *6s. and 5s., and less.*† They are supported, for the rest, on the rates, on charitable doles, and on the price for which they may sell themselves in the street. Those who keep straight—and they are many—are heroines. Those who do not—and they are not few—which of us shall blame?

What, then, do we claim that the Vote will do for Women?

(1) It will open to them some at least of those trades and professions which are in no sense "unwomanly," but which are closed to them at present.

(2) It will obtain for them technical and other education on a level with that provided for men and boys, and so increase their efficiency as workers.

(3) Will it prevent the sweating of women? Not immediately, but it can and will prevent *the sweating of women by Government.* This is an exceedingly important point.

Government Employment of Women.

Government is the largest single employer in the country, and throughout its service women get lower pay than men, even where they do exactly the same work. Some, it is not too much to say, are infamously sweated. There are women employed on the making of mail bags, or army clothing, under Government contracts, who cannot with the utmost toil earn more than 5s. or 6s. a week. Occasionally some such case as this gets into the papers:—

> On Monday, April 26th, 1909, a widow named Elizabeth O'Brien aged fifty-six, was charged in Westminster Police Court with attempted suicide. Her husband had been dead nine months, and she had failed to keep herself by the hardest labour. She was engaged in making uniforms for Territorials, and trousers for policemen, and by working ten and a half hours daily could earn barely a shilling a day. The rates of pay mentioned were: 3¾d. for basting and finishing police trousers —nearly four hours' work; ¼d. a pair for putting footstraps on cavalry overalls—half an hour's work; territorial riding breeches, 8d.—and she could not possibly make two in a day. Mr. Smith, the magistrate, discharged her, and promised her assistance.

* "Women and Insurance," by Mary R. Macarthur. The National Labour Press, Ltd.

† Select Committee on Home-Work. Evidence of nearly all the witnesses called.

But for one such case that comes before the courts, and is helped, there are many which are never heard of at all, because the sufferers choose, not death, but a life which is worse than death.

The Direct Cure for Government Sweating is the Vote.

Mr. Lloyd George, Chancellor of the Exchequer, speaking at the Albert Hall on December 5th, 1908, said of the inequality of pay given by the Government to women and men :—

> "That inequality would be impossible if women had the same right to vote, and therefore to call the Government to account, as men have. And this is one of the greatest arguments for Women's Suffrage."

Mr. George, being Chancellor of the Exchequer, is paymaster, and his opinion should carry weight.

But facts are more weighty than opinions, and the facts show that men have succeeded in putting an end to the sweating of men by Government, by means of their votes. Their representatives in the House of Commons secured the passage of a resolution by which Government was bound to pay to all men employed under it, directly or by contract, the trade union rate of wages. If there is no union in the industry in question, a "fair" or "standard" wage must be given.*

Women have practically no share in this advantage, because their trades are so sweated that no "fair" or "standard" rate exists at all. Mrs. Ramsay Macdonald, giving evidence before the Select Committee on Home-Work (1907), said :—

> "The wording [of the Fair Wages Clause] is 'Having regard to wages current in the district,' and when you get to women, I am afraid that no good wages ever are current, or at any rate the average wage is so low that it comes to be fairly a sweating wage . . . so that, over and over again, the employers simply laughed at me when I said to them: 'Do you pay a good wage to women? Are you not obliged by the terms of your contract?' They said that nobody ever came to inspect, or to see what they paid."

In Norway, when women were given the vote (in 1907), the wages of women employed in the Post Office were immediately raised to the same level as the men's. In Australia, the wages of men and women, throughout the Federal Public Service, and the Junior Grade of the State Education Department are the same, owing to the vigorous action taken by Women Suffragists. Miss Vida Goldstein tells how she and her friends sat and listened to a debate on a Bill for the reform of the Government services, in 1903†, and found that an unequal rate of pay was proposed for men and women. They at once brought pressure to bear on their representatives, and *all the inequalities were removed.* Until then, says Miss Goldstein, "you had a telegraph line, with a man

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* Commonly called the "Fair Wages Clause."

† Australian women received the Federal Franchise in 1902.

at one end earning £200 a year, and a woman at the other earning £80." This anomaly can still be seen in England—where women have no votes.

Wherever women have been enfranchised, they are raising the standard of women's wages, and as has been shown, have in some cases actually raised them to the same level as those paid to men. All questions concerning the work and wages of women, said Mr. Fisher, Premier of the Commonwealth of Australia, "are *very tenderly treated*, since the vote has been won."* Nor are Government employees alone affected by this.

The Standard of Pay adopted by Government influences other employers.

It is a commonplace of political economy that the price paid for any commodity by a buyer on a large scale, affects the price that other buyers in the neighbourhood must pay. This rule holds good for buyers of labour, and Government is the biggest buyer of labour in the country. The rate paid to women in Government employ affects the rate paid to women all over the country. Its lowness helps to depress their position everywhere in the labour market. The municipalities and the private employers are influenced by it, and would in the long run have to improve their wages if Government did so. They might not pay the same, but they would have to *approximate* to the same rate of pay.

This kind of influence works slowly perhaps, but it goes deep. In Australia, for example, the private employer is gradually following Government example. In England, on the other hand, where a minimum wage is under discussion, the example of the Government is quoted as an excuse for fixing a lower rate for women than for men.†

Political Power can fix, and has fixed, Wages in some cases.

When the wages paid in any industry fall below the level of subsistence, a standard or "minimum" wage has in some cases been fixed by Government. This has been done in Australia, in many trades; in England, under the Trade Boards Act, it has been done in four only; and the number of sweated industries is legion. That a minimum wage should have been fixed for *any* of these, however, proves beyond dispute that at least in some cases *political power can determine wages.* Such a use of it would be, to sweated women, what the "fair-wages clause" has been to men.

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* Mr. Fisher to a Deputation of the N.U.W.S.S., June 2nd, 1911.

† Since this was written, the Home Office has issued a recommendation to local authorities to see that the "Fair Wages Clause" is inserted in all contracts given out by them. This shows how the standard set by the Government tends to be adopted by other employers of labour.

Thus it will be seen that the power of the vote has

(1) made Goverment a "model employer" for men; and

(2) through the indirect influence of this large employer of labour, bettered their position throughout the labour market.

(3) In countries where women are enfranchised, it has done or is doing the same for them.

Further: the economic position of women will be improved by their improved status. This has invariably been the case with men. The enfranchisement of each class has been followed by the social and economic improvement of that class. This is true even of the agricultural labourer, who has no trade union, is still badly paid, and not highly skilled. Badly off as he is in many respects, he is better off than he was before 1884.

"As an Assistant-Commissioner to the Labour Commission," writes Mr. Cecil Chapman, "I travelled through seven counties to gain evidence of the agricultural labourer's condition, and in no case did I find any contradiction to the statement that the acquisition of the franchise had resulted in an improvement of the general treatment and conditions, which was quite appreciable and appreciated."*

The reason is obvious. A man with a vote is a more important person than a man (or a woman) without one. He becomes especially important to the legislator, who asks with anxiety what are the needs and wishes of a class of citizens possessed of the power to turn him out at the next election.

It must be remembered also that

Wages are not to be reckoned in money only.

Legislation which improves the housing of the worker, gives a "small holding" to the agricultural labourer, insists on proper conditions in the factory, forbids unjust "fines," and so on, is all legislation which improves the wage properly considered. Nearly all such laws are the direct result of the votes of the class benefited, and women (being voteless) have benefited only when their interests happened to be identical with those of the voters. For example, male inspectors of factories were appointed long before women. It was said that "women were not needed," and that the women workers in factories "made no complaints." At last, after much agitation, two, and then four, women inspectors were appointed.† They received many complaints, set right abuses of which male inspectors never were, and never would be, informed, and justified their appointment in every possible way. Yet after eighteen years, there are still only eighteen women factory-inspectors, and

* "The Englishwoman," March, 1909.
† 1893 and 1894.

Mr. Masterman informed a deputation sent to interview him on the subject, that there is "no immediate prospect of adding to their number." He added that he was busy with a scheme for increasing the number of inspectors of mines—a more urgent necessity, as (he was sure) we should all admit.

Certainly mines should be adequately inspected. Is that any reason why factories should not? Is the health of the mothers of the race not an "urgent" matter? Or is the "urgency" not one of the safety of miners or the health of women, but of the satisfaction of people with votes as against people with none?

Another grievance remediable by law is the system by which, in some trades, wages are lowered by arbitrary and oppressive fines. These have been to a very large extent stopped in the case of men. Women are helpless against them. They are persons of too little account in the world to protest successfully, and their protests cannot be carried to the House of Commons. An excellent example of the "power of the vote," and impotence of the voteless is given by Miss I. O. Ford.* She writes:—"When the tailoresses of Leeds endeavoured through their Union (to which at that time no men belonged), to abolish the 32 days' overtime allowed by law, they 'agitated' for years† by means of letters and petitions to the Government. Nothing was done. Nothing was even discussed. And overtime is allowed to-day precisely as though no protest had ever been made. But when the textile unions represented by *male* officials, desired to have the 'Particulars Clause'‡ inserted in the Factory Acts of 1895, they got it done, easily and *quickly*, through Parliamentary action. The opposition of the employers was over-ridden. The trades union men themselves came up to the House and saw it through."

The question of "custom" has also a large share in determining the rate of women's wages.

All authorities are agreed that in many industries women are paid a wage which has little or no connection with the value of their work.§ It is "what women get in these parts" that is offered. And there is a very general feeling that it would be foolish to give "big money" to women, even if they have earned it.

Here again the vote would alter matters for the better. Women accept this customary wage, because they have learnt to "accept the inferior position, and take it for granted."‖ While, on the

* Secretary, afterwards President, of the Leeds Tailoresses' Union, 1890–1903.
† About 1894 to 1900.
‡ Ensuring full payment to weavers in the textile trade for work actually done.
§ See especially in this connection, "Women's Work and Wages," by Cadbury, Matheson, and Shann, pp. 133, 134, 136. And "Economics of Women's Work and Wages," by Helen Bosanquet, pp. 2 and 3.
‖ "Women's Work and Wages," p. 260.

other hand, employers think it "nothing less than impertinence for the women to desire any voice in regulating the conditions of their work, or the remuneration they receive for the work."*

Nothing will teach both employers and workers to set a higher value on the services of women more speedily than the enfranchisement of the latter. It is no longer thought an "impertinence" on the part of men to express an opinion on the conditions of their work. On the contrary, they are specially and urgently invited to do so, by those who want their votes.

Nothing is more remarkable than the trouble taken by Members of Parliament to understand the wishes of their constituents, and the conditions under which their constituents work. A man who represents such a place as Liverpool, Sheffield, or Oldham, will be at great pains to know all he can about shipping, steel, or cotton, in order that his constituents may feel that they are really "represented," when legislation on these subjects is proposed. If they do not feel this, their Member will lose his seat.

Women have no such leverage. They may be legislated out of their work in sheer light-hearted sentimentality, by men who have never taken the trouble to understand the industry in question. Mrs. Fawcett once took a deputation of women chain-makers from Cradley Heath, to lay their case before the Home Secretary. Their comment after the interview was "Ee, pore gentleman! It must be 'ard for 'im, 'aving ter make laws, and not knowin' anything about it!" It may have been hard for him, but on the whole is perhaps harder for the women, who are legislated for—not always, but too often—by an assemblage of gentlemen, who "know nothing about it." Our modern industrial system is so delicately poised and so complex, that legislative interference, though often necessary, entails great suffering unless it is guided by real knowledge of the industry concerned. To acquire such knowledge is toilsome; but it is worth while when it means votes. Where no vote is concerned it is not worth while, and it is too much to expect all Members of Parliament to take trouble for no political advantage. Most of them are very ordinary human beings, after all. It is time that women were given some *claim* on the time, service, and intelligence, of those who legislate for them.

There can be no further doubt that votes can and do influence wages, whether in the broader sense of general conditions, or the narrower one of money actually paid. It remains to be considered whether an improvement in the position of the women would mean a lowering of the standard for men.

Would a rise in women's wages injure the men?

We contend that the result would be the exact opposite. At present, the helplessness of the women is a danger to the men. They have tried to meet the danger by driving the women out

* "Women's Work and Wages," p. 134.

wherever they could; and it is, after all, impossible not to sympathise with the men in their anxiety. They see in the cheapness of women's work a menace to themselves and to their wives and families. They see themselves turned out of their employment by women who accept half or less than half their wage.

Who benefits by this? No one. The man loses his work; the woman is sweated; the children are neglected and half starved; the employer, even, generally suffers in the end, for sweated work is bad work, and brings a bad reputation at last.

But these things cannot be remedied by simply forbidding women to work. It is not their *presence* in the labour-market that is the cause of the evil; it is their *cheapness*.

To try to drive them out is like trying to drive back the sea. Women must work, and in fact they have always worked. Their work, it is true, was formerly done in the home, whereas it is now very largely done in factories. The industrial revolution which introduced machinery and made this change necessary is no one's fault; but it is a fact. And it has taken away from the women's homes, the work they had done there for ages of the world's history. They cannot be supported in idleness. No state in the world can support half of its population in idleness; and as a matter of fact, *there is no working man in the country, and very few professional men, who have the slightest intention of allowing their daughters to idle at home.* The vast majority of women who earn their living in England to-day do so from sheer necessity. They work because they must, and they do well. *It is not the worker, but the idler, who is a burden on the community.*

It is, then, at best, useless, at worst, disastrous, to legislate against women's labour. In spite of all, "the economic boundary between men and women" (*i.e.*, between trades kept for men, and trades invaded by women) "is constantly retreating on the men's side."*

It is the combination of the woman and the machine that is defeating the men. Women are still kept out of the higher branches of industry, it is true, but the employer keeps a sharp watch on his wages book. It is generally the only part of his expenditure that can be "cut," and he never forgets it. The men he cannot force below a certain level, but he can get women very cheap. It is, therefore, worth his while—indeed, in the face of competition, it is often necessary—to devote thousands of pounds to the invention and perfecting of new machines, by which one process after another can be carried out; because, though the machine may be costly,

* "Problems of Modern Industry," by Sidney Webb, p. 75.

when it is perfected, it can be run by a comparatively unskilled woman—and the man goes. *It is not a sex war, but an economic war.* Cheap labour and the machine drive out dear labour.* And "the economic boundary between men and women is constantly retreating on the men's side."

No power on earth can prevent the employer taking cheap labour where he can find it. No power on earth can prevent the sweated and helpless woman from underselling the man.

There is no law for the starving, and to forbid women to work, without guaranteeing to them any other means of support, is not only cruel—it is stupid. It defeats its own end. For the more oppressed, the more helpless, disorganised, and unskilled, the women are, the greater drag are they upon the progress of the men. In this way do the helpless take their unwilling, piteous revenge, on those who fight against instead of with them.

The *only* cure lies in giving them the power to help themselves, to make themselves more efficient, to demand, from Government at least, an equal wage for equal work. There is no "immorality," as our opponents sometimes allege, in using political power to enforce justice; and "equal pay for equal work" *is* justice.

If this were won, workers would be chosen on their own merits, and men would not be rejected as now too often they are, in favour of women, who are not better workers, but who are appallingly cheap. Men surely will not ask for—they do not need—more protection than this. They do not resent the presence of the woman who demands an equal wage, but of the woman who accepts a lower one. Their antagonism is in no sense one of sex; **it is economic.†**

Teach the women to set a higher value on themselves, give them the rights of citizenship, place in their hands the powerful weapon by which men have extorted justice from the Government and consideration from their employers and we shall see men and women fighting no longer in opposite camps, but side by side, in the struggle for better conditions and a higher standard of life.

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* Mr. Cadbury gives a list of trades in Birmingham alone, in which women have replaced men, "through the introduction of machinery for the most part":—

Brass Lathe Burnishing.	Spectacle and Eyeglass Grinding.	Tailoring.
Chain Making.	Corset Fasteners.	Tin-plate, Press Stamping, &c.
Cycle Saddle Frame.	Cycle Work.	Whip Trade.
Enamel Saucepans, &c.	Wood Box-making.	Umbrellas.
Harness Stitching.	Military Ornaments.	Book-binding.
Gold and Silver Cheap Jewellery.	Layers-on (Printing Trade.)	Brass Casters.
		Core Maker.

—"Women's Work and Wages," p. 39.

† That the men know this is shown by the fact that when women complain of the invasion of *their* industries by men, they are met with the reply that the men do them no wrong, *since they do not take the work at a lower wage.*

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BY

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WOMEN AND PRISONS.

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PART I.—DEVELOPMENT OF THE ENGLISH PENAL SYSTEM.

Introduction.

WOMEN suffer under the criminal law and its administration as men do and in other ways besides. In order to understand what specially relates to women it is necessary to consider our penal system as a whole. The penalty of imprisonment is now its central feature; but the predominance of the prison is a comparatively new thing, coincident with the growth of our present economic conditions, and as they change it seems likely to cease. The instinct of self-preservation in a community is the source of all penal systems; but that instinct has intermingled with a variety of passions, and striven to explain and express itself by very dissimilar ideas and methods at different periods in our history. Fragments of all of these compose the underlying strata of our penal system to-day.

Revenge and Restitution.

The original form of punishment was retribution—an eye for an eye and a tooth for a tooth—really the fundamental childish instinct of hitting back when struck. Later, as an alternative to retribution, came the idea of restitution, that is of payment in money or kind for personal damage done or for goods appropriated. In Anglo-Saxon customary law each man and each part of a man had a price, which was paid as compensation direct to the injured person and his kin. Later his lord and his king demanded compensation as well. Ultimately the State annexed the whole in criminal cases on the plea that the wrongdoer had broken the king's peace. An attenuated remnant of the ancient custom of restitution has come down to us in the form of fines, and of the damages and costs awarded in civil cases. But it is believed by some criminologists that a return to the old idea, recast to suit modern conditions, might be a valuable agency in the reform of the criminal.

Revenge and Expiation.

Ideas of revenge and restitution have been allied from time immemorial with that of expiation. The wrongdoer must be made to atone for his crime by undergoing some form of personal suffering. Under the influence of mediæval theology revenge and restitution merged in the expanding force of this ancient doctrine till it became the dominating factor in criminal procedure. Hanging, burning, beheading, dismemberment, crushing, branding, ducking, whipping, mutilation, the stocks, and the pillory were favorite modes of punishment in England almost down to modern times. Banishment from city, village, guild, or hundred, which often meant in the Middle Ages outlawry * and starvation, was succeeded early in the seventeenth century by transportation to our plantations across the Atlantic, the transported being sold as servants to free settlers.† After the revolt of the American Colonies Australia was substituted for America as a dumping ground for our convicts, male and female; and the plight of most of them there in "hulks" or "factories," in chain gangs, or as "assigned servants," was little better than that of servitude in the plantations.‡ Transportation finally came to an end in 1867 with the refusal of West Australia to receive convicts.

Up to the beginning of the last century death or transportation were the usual forms of punishment even for trivial offences. A child might be hanged for stealing a pocket handkerchief. But since 1838 the death penalty has rarely been exacted for any offence save murder.§ Since 1868 executions have taken place in private. In earlier times they were public, and people used to make up parties to see criminals hanged.

Little mercy was shown to women in the matter of punishment; indeed burning, one of the most cruel of deaths, was a frequent penalty for their offences. A woman was burnt for coining in 1789. The penalty was abolished the following year. A woman was flogged through the streets of London for the last time in 1764. Whipping for female offenders was finally abolished only in 1820.

Whilst the idea of expiation dominated society mere imprisonment was too mild a final penalty for anything but debt or lesser political offences. Gaols were fever haunted, pestiferous dens, sometimes underground, where men, women, and children awaiting trial or execution of sentence were fettered and huddled promiscuously together. They got food and drink by bargaining with their gaoler, who received no wages, but made his living out of the prisoners and could retain them in bondage until they paid him. There were also Houses of Correction for rogues and disorderly persons and

* Outlawry, i.e., being out of the king's protection, is still a possible penalty for crime; abolished for civil cases 1879. Pollock and Maitland, "History of English Law," Vol. I., p. 49, note. For imprisonment in the Middle Ages and penalties incident to exile, Ibid., Vol. II., pp. 516-8. Banishment from the village was practised in Scotland in the nineteenth century. Andrews, "Old Time Punishments," p. 114.

† "White Servitude in Virginia" (Ballagh); "Slavery and Servitude in North Carolina" (Bassett). Johns Hopkins University Studies, xiii. and xiv.

‡ See Report of Select Committee on Transportation, 1838.

§ 1,601 persons were condemned to death in 1831; in 1910-11 only 25.

the Bethlehem Hospital (Bedlam) for obstreperous lunatics, where the public paid to go on Sundays to see the insane, like animals in the Zoo, behind the iron bars of their cages.

Deterrence and the Reform of the Criminal.

A note of coming change was struck during the eighteenth century. The Society of Friends in America and in England were pleading against the death penalty, and urging that room for repentance be given to the criminal; while Howard* and Bentham were formulating schemes of punishment which might deter from crime, whilst reforming instead of merely torturing the evil doer. The agency they proposed was imprisonment in isolation, and the cellular penitentiary at Millbank was built in 1816 to try an experiment for which, however, public opinion was not yet ready. For more than thirty years Millbank was the white elephant of prison reform.

The movement initiated by Romilly and Mackintosh for the substitution of the penalty of imprisonment for those of death or barbarous misusage, progressed side by side with the efforts to improve the state of local prisons initiated by Howard, and carried on by Elizabeth Fry, Nield and Buxton and their Society for the Reform of Prison Discipline. The reforms it strove to effect were the classification and separation of prisoners, at all events of the sexes; a bed for each person, if not a separate cell; some attempt to preserve health; the appointment of prison chaplains and the moral instruction of prisoners; continual and arduous employment; the use of fetters only as an "urgent necessity"; and female officers for female offenders. For many years the reformers were ridiculed as "ultra-humanitarians" endeavoring to "pamper the criminal classes," but they succeeded in provoking a series of Parliamentary enquiries and some enactments, which, like the efforts of the eighteenth century, remained a dead letter until public opinion overtook legislation.

General progress, including the establishment of a regular police force in 1829, and the more efficient lighting of towns, combined with the abandonment of the worst barbarities of our criminal law, resulted in a gradual diminution of crime. This reassured the public, and when the Australian Colonies made their first resolute stand against transportation in 1840, England was ripe for a new development of the penal system.

The building of the model prison at Pentonville, with 520 separate cells, was followed by the promulgation by Sir George Grey, Home Secretary 1846-52, of a new scheme, in which the prison was the main agency for dealing with all classes of criminals—except those condemned to capital punishment or let off with a fine. (1) A limited period of separate confinement in a penitentiary or local prison, accompanied by industrial employment and moral training. (2) For long sentence prisoners hard associated labor at a public works prison. (3) A ticket-of-leave, curtailing the sentence of well-behaved

* Howard first called attention to the subject in his "State of Prisons in England and Wales," 1777. Mrs. Fry started the "Association for the Improvement of Female Prisoners in Newgate" in 1817. Like Howard she afterwards carried on a widespread agitation for prison reform at home and abroad.

industrious convicts, but leaving them under police supervision. National uniformity in the discipline and diet of local prisons was finally secured by the Prisons Act of 1877, which placed gaols throughout the country under the jurisdiction of the Home Secretary with Prison Commissioners (Prison Board) under him, and Prison Inspectors. Thus the ideal of a method of punishment which should deter by its severity, while reclaiming the criminal by its moral suasion, has been reduced to practice and subjected to the test of experience for nearly three-quarters of a century. Those most convinced of its necessity will hardly contend that it has justified the high hopes and noble enthusiasm in which it originated.

The Modern Point of View.

The scientific study of criminal psychology and pathology and of social conditions in relation to crime, combined with an enlarging sense of collective responsibility, has made the twentieth century thoroughly impatient of the results produced by the penal reforms of the nineteenth. The statistics of recidivism (i.e., the recurrence of convictions of the same person) demonstrate failure to reclaim the individual, whilst the inadequacy of deterrence is suggested by high premiums against burglary and larceny, by country roads infested with rogues and vagabonds, streets with prostitutes, drunkards and pickpockets, hotels and clubs with cardsharpers and "kleptomaniacs," and commercial centres with swindlers and embezzlers, most of whom never come within the reach of the law. It is scarcely needful to add that women suffer even more than men from this continuance of social insecurity.

Modern criminologists regard the attempt to combine aims so incompatible as deterrent punishment and a serious attempt to reform the criminal as the makeshift of a period of transition. The path of penal reform is seen to lie towards the prevention of crime by removal of causes, the classification of criminals for the purpose of dealing with them in the manner most for their own interest, as well as for the public good, the protection of society by the segregation, under beneficent conditions, of the insane, the deficient and the hopelessly anti-social, and the systematic effort to restore the erring to mental health by humane curative and educational treatment.

These proposals of reform are based on an alteration in our view of the incidence of personal responsibility, and the part played by the individual will in conduct. The old idea of penal as of educational discipline was to crush and break, the modern idea is to fortify and build up force of character. Kropotkin, writing twenty-two years ago of his own experience gained "In Russian and French Prisons,"* drew attention to weakness of will and a natural but misdirected desire for approbation, as common characteristics of criminals, whose show of dangerous anti-social energy is often a result of sheer desperation; and his opinion has been confirmed by our best English observers. The remedy indicated by modern thought lies in a development of the personal sense of responsibility for self-direction, which can only exist where scope is afforded for some freedom of action and oppor-

* Page 354.

tunity given for the exercise of bodily and mental powers. The old idea was that the collective force of society should be used to suppress the will and stultify the faculties of every person of whose activities custom or authority disapproved. The modern idea is that the collective force of society should be used to stimulate and support the exercise of individual will power under a sense of personal and social responsibility, and to make every effort to strengthen and restore it where it is enfeebled or lost, combined of course with opportunity for the free exercise in a useful and healthy direction of such powers as the individual may possess. In a word our present inclination towards a positive rather than a negative method for the solution of such social problems as destitution, ignorance or sickness is extending likewise to the treatment of crime.

Such changes would involve nothing less than the abolition of our present prison system, and the movement towards them is as yet but partial and tentative. Our judicial and administrative authorities are aware that the present state of things is by no means satisfactory, but they are still befogged by the idea of safeguarding us by means of punishment as a deterrent, if not as an expiation. They are still trying to reconcile this attitude with the partial adoption of methods likely to be effectual in forestalling crime by preventing its causes and in humanely reclaiming the criminal or gently rendering him innocuous. The two radically incompatible points of view clash at every step, and consequently our latest reforms tend to be halting, inadequate and self-contradictory. Nevertheless they are paths leading up to the coming change.

PART II.—PRISONS.

The prison being the main penal agency of recent times most men and women who come under our criminal law are to be found within its walls. Though the death penalty still stands on the statute book for offences other than murder, it is many years since it has been so applied. The present method of inflicting it is less cruel,* and even for murder there is a growing tendency to extend the limits of the mental irresponsibility or extenuating circumstances which permit incarceration to be substituted for hanging, e.g., in cases of maternal infanticide.†

The Prison System.

Solitary confinement as a part of imprisonment was first introduced by Sir James Graham as Home Secretary in 1842, with the intention that it should be accompanied by definite training. Till 1898 each long-sentence prisoner underwent this confinement, at first for eighteen and afterwards for nine months; it was then reduced to six months, and now to only one for those condemned to hard labor or penal servitude. In the case of women it is only

* A jerk causing instant death by breaking the neck is said to have been first tried as a substitute for slow suffocation by hanging in 1760.

† Three females were condemned to death during 1910-11, but in each case the sentence was commuted.—Report of the Commissioners of Prisons, Part I, p. 103.

undergone by convicts (New Rules, July, 1910). Silence is however insisted upon during associated labor and exercise. A prisoner is supposed to speak and to be spoken to only by officials, and then as little as possible.

Penal servitude was devised in 1853 as a substitute for transportation. It has been applied since 1891 to all prisoners (convicts) with sentences of three years and over. These convicts are employed in associated labor, the men in public works, in building, quarrying, farm work or trades; the women in baking, bookbinding, sewing, knitting, tailoring, mattress making, twine making, gardening, cooking, washing, and general service for the prison. There is but one convict prison for women, that at Aylesbury. Only forty-two women convicts were admitted during 1910-11, of whom thirty-two are classified as "recidivists" and ten as "star" prisoners.* Solitary confinement takes place first in the local prison, in which those with shorter sentences spend their whole time.

Local prisons, in which far the larger number of women are confined, usually accommodate both men and women prisoners in different wards; and, generally speaking, there is one prison to each county. A number of unsuitable local prisons were closed by the Prisons Acts of 1877 and 1898, but in many places there is still room for much improvement in sanitary and other arrangements.

The court, on passing a sentence of imprisonment without hard labor, may direct the prisoner to be treated as an offender of either the first or second division. In the absence of direction he or she is treated as a prisoner of the third or ordinary division, with or without "hard labor." The first division implies detention merely, the second penal discipline much mitigated. Besides short sentence prisoners in these three divisions, local prisons contain those sentenced to death, those awaiting trial, and those imprisoned for debt, all kept separately and under special rules. There is also a star class for first offenders of good previous character who are willing to give their respectable relations as references, which many refuse to do.

In local prisons a matron, and at Aylesbury a lady superintendent, has charge of the women's side. Since the revelations of the suffrage prisoners in 1908-9, a medical woman Inspector of Prisons has been appointed.

Hard labor for a man means labor in solitary confinement, but for a woman associated labor for the same length of time daily (six to ten hours excluding meals), unless the doctor objects, "regard being had to any advice or suggestions from the Visiting Committee or Discharged Prisoners Aid Society."

In both local and convict prisons there is a system of marks for industry and good conduct, whereby prisoners may earn remission of sentence and also various privileges attained by stated grades and a gratuity before discharge.

Convicts are classed in three categories:—

A. Ordinary, including (1) star class, as in local prisons; (2) intermediates i.e., other first offenders; (3) recidivists.

* Report of the Commissioners of Prisons and Directors of Convict Prisons, 1910-11, p. 78.

B. Habitual offenders sentenced to preventive detention, who can earn privileges and also gratuities to spend in prison, but not remission of sentence.

C. Long sentence prisoners, who after serving ten years and earning all privileges ordinarily possible, may earn special privileges and gratuities, together with remission of sentence.

The prison staff consists of a governor, doctor, chaplain, and their assistants, and of warders. There are also nurses in the prison hospital, ministers and priests who visit Nonconformist and Roman Catholic prisoners, and skilled instructors. There is a visiting committee of local magistrates for local prisons, and a board of visitors appointed by the Home Secretary for convict prisons, also unofficial ladies' visiting committees and societies which aid discharged prisoners.

Prison regulations * are alike for men and women, with the exceptions here noted. Women prisoners are dealt with by female officers and a female officer accompanies any male official, even the governor, when he visits the women's quarters.

"The labor of all prisoners shall, if possible, be productive, and the trades and industries taught and carried on shall, if practicable, be such as shall fit the prisoner to earn his livelihood on release"; but "a prisoner may be employed in the service of the prison," and short sentence women are so employed, as technical instruction cannot usefully be given to them.

A man over 16 and under 60 condemned to hard labor sleeps on a plank bed without a mattress for the first fortnight, but a woman is allowed a mattress.

All non-technical instruction is under the control of the chaplain, and must include reading, writing and arithmetic, and religious exhortation, for which purpose the chaplain often visits the cells. The prison library consists of books sanctioned by the commissioners (in convict prisons by the directors). During the first month prisoners may only read books of instruction—religious and secular.

"Prisoners who do not do their best to profit by the instruction afforded them may be deprived of any privileges in the same way as if they had been idle or negligent at labor," or be punished according to the general rules. (Regulations in Cells, 1911.)

The main difference between men and women is in diet. All females are allowanced with juveniles. Males over 16 have larger rations.

Analysis of Dietary in Local Prisons.

Diet A. For all prisoners sentenced to less than four months, during the first seven days of imprisonment. Bread (men 8 oz., women 6 oz.) and gruel (1 pt.) daily for breakfast and supper. Dinner: Bread (men 8 oz., women 6 oz.) and porridge (1 pt.), or potatoes (8 oz.) or suet pudding (men 8 oz., women 6 oz.).

Diet B. After first seven days for whole term if not exceeding four months. Bread and gruel (same amounts as A) daily for breakfast and supper for women, porridge substituted for gruel for men's supper. Dinner: Bread (6 oz.) and potatoes (8 oz.) daily, together with soup (1 pt.), or cooked meat (men 4 oz., women 3 oz.), or suet pudding (men 10 oz., women 8 oz.) on two days a week each. Beans (men 10 oz., women 8 oz.) and fat bacon (men 2 oz., women 1 oz.) on the remaining day.

Diet C. After first four months for rest of term. Breakfast: Bread (8 oz.) and porridge (1 pt.) for men, bread (6 oz.) and tea (1 pt.) for women. Supper: Bread and cocoa in the same relative amounts. Dinner: As in Diet B, slightly larger quantities of potatoes, suet pudding, meat or beans being given.

Juvenile prisoners may, in addition to the above diet, be allowed milk, not exceeding one pint per diem, at the discretion of the medical officer, and one pint of porridge in lieu of tea for breakfast.

* The following particulars are taken from the "Prisons Rules for Local and Convict Prisons in England, issued 1898, and revised to December, 1903," compared with later administrative orders and the experiences of prisoners down to 1912.

The dietary for convicts is like C, but somewhat more varied, and sweet things are not excluded.

"The diet for special classes of prisoners, viz.:—(a) Prisoners on remand or awaiting trial who do not maintain themselves, (b) Offenders of the First Division who do not maintain themselves, (c) Offenders of the Second Division, (d) Debtors, shall be Diet B; provided that they shall receive for breakfast one pint of tea in lieu of gruel, and for supper one pint of cocoa in lieu of porridge or gruel; and that when detained in prison more than four months they shall receive C Diet at the expiration of the fourth month."*

Women, like men, are punished for offences against prison discipline by close confinement, by three days on bread and water, or a longer period on low diet in special cells on a plank bed. They may be put in irons but not flogged. Punishments are awarded by the governor or the visiting committee under strict regulations. Prisoners may make complaints to either of these authorities. If a prisoner takes advantage of the privilege, such boldness is said often to result in loss of marks or privileges.

A mother may keep with her an infant at the breast until it is nine to twelve months old.

Such in rough outline is the existing prison system as applied to both sexes.

The Prison System as it Appears to Those Immediately Concerned.

The Prison Commissioners every year issue a report which shows how seriously they take their responsibilities and how anxiously they endeavor to make the best of a system which they still look upon as inevitable. Prison officials whilst holding office are debarred from publishing their views, but on retirement inspectors, governors, doctors, matrons, and chaplains have done so. Their testimony is, intentionally or unintentionally, amongst the most damning evidence against things as they have been and still are.

"The working of prison systems, whether at home or abroad," says Dr. Morrison, late Chaplain at Wandsworth Prison, "teaches us that any person, be he child or man, who has once been in prison is much more likely to come back again than a person who, for a similar offence, has received punishment in a different form."—"Crime and its Cause."

The experience of prisoners themselves is necessarily rare and difficult to obtain. Very occasionally an unfortunate more able to express himself than most publishes such a book as "Five Years Penal Servitude, by One who has Experienced It." Amongst these the splendid and terrible "De Profundis" and "Ballad of Reading Gaol" of Oscar Wilde stand alone. Occasionally a political prisoner like Michael Davitt publishes a thoughtful appreciation of what he has observed. When anyone who has experienced imprisonment does speak it is to condemn the system.

"Penal servitude," said Michael Davitt in 1885 ("Leaves from a Prison Diary") "has become so elaborate that it is now a huge punishing machine destitute, through centralized control and responsibility, of discrimination, feeling, and sensitiveness; and its non-success as a deterrent from crime and complete failure in reformative effect upon criminal character are owing to its obvious essential tendency to deal with erring human beings, who are still men despite their crimes, in a manner which mechanically reduces them to a uniform level of disciplined brutes."

* Ibid.

Women in Holloway.

Since Elizabeth Fry described the "hell above ground" at Newgate few women have written of prison from close personal observation. No female prisoner recorded her experiences until suffragists in large numbers were sent to Holloway (1907-11). Their criticisms are therefore worthy of careful consideration even on that ground alone. The letters or statements of twelve women are here quoted. All are first hand and carefully verified.

First Experiences Summarized.

Received into prison from the van the prisoners are stripped, deprived of all personal possessions, even a name—henceforth they are known by number only—bathed, and dressed in prison clothes, each one wearing clothes exactly similar to those of every other female prisoner of the same division. The three classes wear clothing of different color and texture. The dress has been very much improved during the last two years by the woman Inspector of Prisons. Until 1910 the outfit was that in use by the working classes of 1860, but it is now chosen with a view to hygiene and to the individual needs of the prisoners. A cloak is provided, which may be kept in the cell as an additional wrap. One handkerchief (a duster) is allowed each week, and only one towel is provided.

Daily Routine.

Called at 5.30-6 a.m. Breakfast, about 7 (one rarely knows the exact time). Chapel, 8.30. Associated labor (under skilled instructors for long sentence prisoners). Exercise (about one hour). Dinner, about 12 o'clock. Associated labor. Supper, 5 p.m.

The cell door is then closed for the night and, except in the case of serious illness, is not allowed to be opened again until the next morning. The prisoner may read until the light is turned out (about 8.30), or may go to bed directly she has eaten her supper. All prison work has been taken from her and she is allowed to do no work for herself, nor are mothers with infants allowed to make the baby's clothes.

Between rising and chapel the bed has to be made, the cell scrubbed, and all tin utensils polished. Associated labor under instruction includes needlework, dressmaking, laundry work, or gardening. The rule of absolute silence is in force the whole day. When out at exercise the prisoner must walk all the time, to stand still or to sit down is not allowed. On Sunday the prisoner attends chapel twice and, unless she is allowed out for exercise, is confined to her cell the rest of the day, no work being done.

Food and Hygiene.

"The food may be sufficient to ward off the actual pangs of hunger, but the monotony of the diet amounts, after a time, to positive torture."

"The food is scanty, the ventilation totally inadequate; the result is to make prisoners dull and stupid, unfit to earn their living when they come out, yet the reason that many are there at all is chiefly from their inability to earn an honest living."

"The food of third division prisoners consists of gruel of no flavor whatever, and of the consistency of paste, and coarse brown bread. This is served at 7 a.m. and 5 p.m. At mid-day meat and potatoes are served. I believe the food allowances are worked out so that if they are all consumed a sufficient quantity of the various necessary foodstuffs is taken. But it is now generally admitted that food consumed with a sense of distaste cannot be assimilated, and the bad air and lack of exercise, and the fact that the meals are taken alone, naturally reduce the prisoners' appetites so that they cannot eat the uninviting food, or if they do so, it is of little use to them. Moreover the bread is so hard and dry and is so irritating to the stomach as frequently to set up gastric disorders, so that few of the women can eat half the amount supplied. Therefore it will be readily seen that the women are habitually underfed, their vitality is low, and they are an easy prey to all diseases."

Many other prisoners speak of the prevalence of diarrhœa, which is very weakening, and, with prison conditions, is most inconvenient and distressing in every way. The "convenience" supplied in the cell is totally inadequate, and even if it be of a proper size and does not leak, the fact that it remains unemptied from evening till morning is, in case of illness especially, very insanitary and dangerous to health. "Lavatory time" is permitted only at a fixed hour twice a day, only one water-closet being provided for twenty-three cells.

"I slept in one of the ordinary cells, which have sliding panes, leaving at the best two openings about six inches square. The windows are set in the wall high up, and are 3 by 1½ or 2 feet area. Added to this they are very dirty, so that the light in the cell is always dim. After the prisoner has been locked in the cell all night the air is unbearable, and its unhealthiness is increased by damp. The cells are washed at six in the morning, and the corridors are washed at the same time. In spite of the fact that any adequate through ventilation is impossible, owing to the height of the windows and the small area that opens, the prisoners are locked into the cells again at seven for breakfast, so that they sit in a wet cell and are forced to breathe the evaporating moisture which cannot escape. A great number of the prisoners suffer from chronic catarrh, and anyone with a tendency to consumption could hardly fail to contract the disease."*

In this connection it must be borne in mind that when mental and physical vitality are at a low ebb and impressions from without few and monotonous, the physical facts of existence loom gigantic in the mind and physical discomfort may cause mental agony, especially if the suffering is inflicted by others against whose will the victim has no appeal. Enforced privations produce exactly the opposite of the spiritual uplifting, sometimes a result of voluntary asceticism.

Discipline and its Effects.

A matter on which the suffrage prisoners lay much stress is the inhuman way in which the wardresses address the prisoners, and the lack of all human intercourse between them. This was explained by an official in the prison service as being necessary in order to avoid any possibility of favoritism, and to avoid jealousy among the prisoners. To maintain order among such a heterogeneous collection of rebels as a crowd of prisoners, it is found necessary to accustom them to obey a sharp word of command.

"The prison system is not calculated to reform criminals. It induces deceit above all things—the rule of silence being one that everybody breaks whenever possible. It reduces people to mere numbered machines, thus doing away with any sense of personal responsibility. It suppresses all initiative and undermines all self-reliance, whereas I take it that the desirable thing is to build up a sense of self-reliance

* Next to heart disease the most frequent causes of deaths in prison are pneumonia and phthisis.—Medical Report of Commissioners, 1910-11, Part I., p. 40.

and respect, and to encourage people to have a stronger sense of individual responsibility towards the rest of mankind."

"The whole system is one to destroy anyone's self-respect and moral control."

"I observed the gradual hardening of certain of the prisoners who were quite obviously full of grief and shame on arrival. . . . . The principal effect of the prison system as it now exists seems to me to be the destruction of self-respect and initiative. I believe many of the wardresses who come into closer contact with the prisoners than any of the other officials, take what opportunity they find of urging the women to a better way of life, but since the system works in the other direction, their influence cannot be very great. The wardresses are as much prisoners as we are."

"To be continually in disgrace; to never hear a kindly tone or a word of encouragement, is sufficient to crush those who are already weak, and who have fallen in the battle of life. . . . . There is an atmosphere of fear and suspicion throughout a prison that weakens the character and engenders deceit."

"Every endeavor is made to render the life dull, monotonous and dreary; all the surroundings are as hideous as human ingenuity can make them, the food unappetizing, and the whole tone brutalizing and hardening."

Punishments.

"When you are put into the punishment cell you feel as if you were absolutely cut off from the rest of the world, the echoes of footsteps along the stone corridors, the banging and locking of doors become so magnified as to have a gruesome and horrible effect on your nerves."

"Hour after hour, day after day (seven days) I spent sitting on the wooden bed, doing nothing, hardly thinking, staring into vacancy. I could well imagine the loneliness, silence (for two doors close this cell), darkness and cold, sending women mad. The horror of it is still with me, and night after night, unable to sleep, I go through it all again. . . . . I tried walking about to obtain exercise, but the cell echoed so weirdly and horribly I was obliged to desist."

This prisoner was in "close confinement," i.e., no exercise, chapel, or anything that takes a prisoner out of her cell is permitted.

"The punishment cell is longer and higher, though not so wide as the ordinary cell. . . . . The furniture consisted of two shelves in one corner, a wooden bed three inches high with wooden pillow, also fixed into the ground, with the top and one side against the wall, and a tree trunk clamped into the wall was the only seat. A few tin utensils, every one of which leaked. . . . . The cell was damp, and any water spilt took days to dry up."

Most prisoners complain of want of ventilation, especially in punishment cells, but one says :—

"The punishment cell is bitterly cold and very draughty. And all punishment cells are very dark, light only shining in on bright days, and in the middle of the day."

Handcuffs, another form of punishment, are described as

"A brutal torture, especially when placed behind, as the arms have to be forced back and twisted before they can be fastened, and they are fastened in such a manner as to give cramp; after a time your arms are dead and numb."

As to the infliction of punishments the same prisoner says :—

"The way the punishments are dealt out by the visiting magistrates is really too callous. The sentences, you know, are already arranged before they have heard your side of the question"

Punishments may be given for not completing the task set. In undetected cases of incipient insanity or imbecility, the effect of such punishment is too hideous to contemplate.

What wonder then that the women who go to prison become hardened criminals, and that the problem of the female recidivist haunts the brains of the conscientious commissioner?

The root of the matter seems to be that there is no attempt at individual treatment, and no effort to draw out the best that is in each prisoner. Goodness, kindness, humanity are crushed out by the deadening life. The high grim walls, the iron bars, the hard bed, and all the bare surroundings are but outward signs of the essential fact of the absence of love and beauty. In the piteous words of the "Ballad of Reading Gaol" :—

"For neither milk-white rose nor red
May bloom in prison air;
The shard, the pebble and the flint,
Are what they give us there:
For flowers have been known to heal
A common man's despair."

PART III.—CRIMINALS AND CRIME.

I.—Relative Statistics for Men and Women.*

According to the last Annual Report of the Prison Commissioners the number of prisoners received under sentence in His Majesty's Prisons amounted to 186,395 during the year, a decrease of 13,870 from the year before (p. 4). Some of these moreover were committed several times during the year, so that this total is in excess of the actual number of fresh offenders received. The total numbers in custody during the year were 194,037 males and 42,581 females in local prisons, and 4,559 males and 164 females in convict prisons (p. 29).

Average Daily Population of Prisons, 1910-11 (p. 5).

	Males.	Females.	Total.
Local	14,596	2,386	16,982
Convict	3,195	114	3,309
Borstal	508	27	535
State Inebriate Reformatories ...	24	54	78

Note that the number of women prisoners is very much smaller than that of the men. Nevertheless records of recidivism show that of the males a percentage of 58·8 only had been previously convicted and as many as 77·2 of the females (p. 17).

These figures seem to lead to the following conclusions :—Either (a) Crime among women, while confined to a much smaller class than among men, proceeds from an ineradicably unmoral nature; in other words, those women who commit crimes are much worse morally and therefore less reclaimable than men criminals; or (b) Prison treatment is better suited to men than to women, reforming a percentage of 41·2 of them, while only 22·8 of the women are deterred from committing further breaches of the law; or (c) Owing to the state of public opinion imprisonment affects the future social and economic life of women more adversely than that of men, and further crime results from bad company, poverty and despair.

* Reference, unless otherwise stated, is to "The Report of the Commissioners o Prisons and the Directors of Convict Prisons for the year ended March, 1911," Part I.

The period of detention and the method of treatment naturally affect the whole question.

Periods of Detention in Local Prisons.*

The total number of prisoners committed to local prisons from ordinary courts during 1910-11 was 166,230. (Males 130,350, females 35,880.) The length of sentences was as follows :—

	Males.	Females.
Over 2 years	3	0
Over 18 months and under 2 years (inclusive) ...	235	11
Over 12 months and under 18 months ,, ...	1,044	33
Over 3 months and under 12 months ,, ...	7,967	1,143
Over 1 week and under 3 months ,, ...	74,896	21,606
1 week and under	46,205	13,087

Thus it will be seen that while the majority of prisoners of both sexes are convicted for three months or less, the average length of sentence is even shorter for women than for men, and only 44 women out of 35,880 were convicted for twelve months during the year.

The Prison Commissioners† give a "typical case" of a girl of 20 committed for a month or less thirteen times in two years for prostitution, vagrancy or indecency. The Lady Inspector says of such cases "a stream of bright, childish girls passes in and out of the prisons many of whom are in the power of older and worse people than themselves. . . . In spite of their dreadful experiences they do not differ greatly in (natural) mental and physical development from the better class girls who are growing happily at school and hockey-field while they are qualifying as prison habituals." Their stunted minds, she continues, are gradually perverted, enfeebled or unhinged unless they can be removed from the influences that are destroying them, but short sentences for purposes of educational treatment are well-nigh useless.

Ages of Convicted Criminal Prisoners Committed to Local Prisons on Conviction during the Year ended March, 1911.

	Male.	Per centage of total.	Female.	Per centage of total.
Under 12	—	—	—	—
12 to 16	32	—	2	—
16 to 21	10,380	7·0	1,163	3·2
21 to 30	36,555	27.7	7,831	21·8
30 to 40	36,626	27·8	12,569	35·0
All ages	131,746	—	35,949	—

The question of the age incidence of crime is important. It appears from these statistics and others that the age incidence is higher in women than in men. The proportion of youths to girls under 20 is about nine to one, the number of men between the ages of 20 and 40 are much the same, but far the largest proportion of women criminals are aged from 30 to 40. (Appendix V, p. 67).

* Ibid, p. 64.

† Ibid, pp. 11 and 34-6.

Differences in the Nature of Crime.*

		Convictions on Indictment.	Summary Convictions and in default of Sureties.	Total.
(a) Offences against the person (murder, wounding, cruelty, including cruelty to and neglect of children, assault and immoral offences)	Males	939	9,067	10,003
	Females	84	1,877	1,961
(b) Offences against property with violence (burglary, robbery, etc.)	Males	2,475	—	2,475
	Females	36	—	36
(c) Offences against property without violence (chiefly larceny, stealing and fraud, including forgery)	Males	4,626	16,234	20,858
	Females	412	2,575	2,987

The above table gives the figures for the three main divisions of serious crime. The most noticeable fact in it is the comparative rarity of crimes of violence among women ; except for cruelty to children, including neglect,† the proportion is markedly less than amongst men. It may also be taken as a certainty that there is a much smaller skilled professional criminal class among women than among men. There are few professional criminals in class (a) ; probably the largest number, chiefly men, belong to class (b).

A barrister tells us that in his many years' experience at the criminal bar, practically all women convicted of indictable offences are (1) prostitutes or (2) married women convicted of neglecting their children through drink, or (3) domestic servants who have succumbed to their peculiar facilities for stealing clothing or jewellery ; usually girls in poor households and themselves physically and mentally below par. Of these three categories prostitutes are immensely the largest, from 85 to 90 per cent. of the whole. "It would be almost true to say that indictable crime among women is confined to women who are prostitutes. This is, I fancy, the main explanation of the greater irreclaimability of women criminals."

It is interesting to compare these facts with those of the older system before penal servitude took the place of transportation for long sentence prisoners. From 1787 to 1837, 43,506 men and 6,791 women were transported to New South Wales, and 24,785 men and 2,974 women to Van Dieman's Land from 1817 to 1837. The largest consignment in any one year occurred in 1833, when 2,310 men and 420 women were sent to New South Wales, and 1,576 men and 245 women to Van Dieman's Land. The evidence before the Select Committee‡ stigmatized the conduct of the women convicts as being "as bad as anything could well be." They were "ferocious," "drunken and abandoned prostitutes," "more irreformable than male convicts." When assigned as servants "from negligence they turn to pilfering, from pilfering generally follows drunkenness, and from drunkenness generally debauchery, and it is very rare indeed,

* Statistics brought together from same Report, Tables pp. 104-7.

† During 1910-11, males convicted summarily and otherwise for cruelty to children 870, females 675. Compare proportion with that for common assault, males 4,416, females 821. Ibid.

‡ From "Report from the Select Committee on Transportation communicated by the Commons to the Lords, 1838."

that a woman remains a few months in service before she goes to the factory for punishment." "The proportion of women reformed is much smaller than amongst men," but "those who have good mistresses turn out well." In some places convict women servants could only obtain some sort of protection from brutal ill-usage by prostituting themselves. (Evidence of Rev. Dr. Ullathorne, Vicar-General of New Holland). Women convicts "contaminated all around them, and it was impossible to reform them," "they are so bad that settlers have no heart to treat them well," nevertheless, marriage sometimes reformed them. (Evidence of P. Murdock, Superintendent of Emu Plains).

The comparison of these observations upon the results of a bygone method with observations upon the methods of to-day seems to indicate that whilst women are less likely to become criminals, they react still more disastrously than men under penal severity; also that there is an intimate connection between prostitution and crime amongst women.

II.—Causes of Crime.

It must be borne in mind that "crime" is an arbitrary legal term. "There is an enormous mass of so called crime in England which is not crime at all. . . . Eighty-three per cent. of the annual convictions, summarily and on indictment, followed by committal to gaol, are for misconduct that is distinctly non-criminal, such as breaches of municipal byelaws and police regulations, drunkenness, gaming, and offences under Vagrancy Acts";* also the peculiarly feminine offence of prostitution.†

The large proportion of brief sentences (p. 14 infra) are in themselves enough to indicate the triviality of the offences, and, as Major Griffiths says, "the question will arise some day whether it is really necessary to maintain fifty-six local prisons, with all their elaborate paraphernalia, their imposing buildings, and expensive staff to maintain discipline in daily life and insist upon the proper observation of customs and usages, many of them of purely modern invention." He might have added "or of dubious social value." We have nearly always some men and women in our prisons who are there for zeal in social reform or individual experiment distasteful to custom or to the powers that be, though the future may regard it as harmless or even acclaim it as beneficial.

* Major A. G. F. Griffiths, H.M. Inspector of Prisons 1878-96, article "Prisons," Encyclopædia Britannica. For Major Griffiths's larger works see Bibliography. Compare Kirkman Gray, "Philanthropy and the State," pp. 161-4.

† 8,642 women were sent to local prisons for this offence during the year March 1910-11; 6,013 of them in default of fine. During the same year out of the 123,172 males and 35,378 females received into local prisons, 3,614 males and 149 females were sentenced as disorderly paupers, 2,115 males and 134 females for neglect to maintain a family, and 926 males and 44 females for stealing or destroying workhouse clothes and other offences against the Poor Law. Under the Vagrancy Acts 20,988 males and 1,061 females were sentenced for begging, and 5,087 males and 381 females for sleeping out of doors. During this year altogether 60,386 males and 24,499 females were imprisoned simply in default of payment of fine, and 17,437 as debtors or under civil process. 910 males and one female were committed under the Game Laws. Report of Commissioners of Prisons, Part I., pp. 28, 109-10.

Turning to crimes of more serious character, one of the most important determining causes appears to be mental disease or deficiency. Besides the considerable number of criminals certified insane before conviction there is an even larger proportion found to be insane on reception in prison or at some period during imprisonment.

The Report of the Medical Inspector for 1910-11* gives the number of prisoners certified insane in local prisons during the year as 136, of whom 121 were males and 15 females.

We select the following as typical cases :—†

Age.	Degree of Education, Standard.	Occupation and Offence.	Sentence.	Supposed Cause.
27	I	Servant, neglecting children.	3 months hard labor.	Recurrent melancholia (puerperal) due to trouble.
35	Nil	Rag Sorter. Drunk and Disorderly.	1 month hard labor.	Melancholia, due to intemperance.
28	IV	Dressmaker. Prostitution.	1 month imprisonment.	Insane on admission. Melancholia, due to stress.
29	Imperfect	Laundress. Burglary	3 years penal servitude.	Recurrent mania, probably congenital.

Congenital mental deficiency appears in the statistical table as the main cause of insanity leading to crime. Other causes appearing with regularity are alcoholism, epilepsy and syphilis. Among criminologists hereditary predisposition is also generally accepted as an operative cause.

The congenitally feeble-minded form a much larger proportion of the prison population than actual lunatics. During 1910-11 "the number of prisoners formally recognized as being so feeble-minded as to be unfit for the ordinary penal discipline was 359 in local prisons and in convict prisons 120."‡

In this class must also be included the moral imbeciles, chiefly congenital. Here is a typical instance :—§

No. 1191, aged 27, education imperfect, a hawker, who committed an indecent assault, sentenced to three months hard labor, was found on reception to be of "unsound mind" in the form of "congenital mental deficiency, moral," from "congenital syphilis."

Again, there are a certain number of mentally unusual persons, possibly of exceptionally brilliant gifts, who need special conditions to develop healthily, and not obtaining them may become criminals. Add to these, and to the mentally unsound and deficient, all those normal persons who are goaded or led into crime as a result of preventible social causes, such as extreme poverty, or negligence and misusage in youth, and a very small proportion of our criminal population remains to be accounted for as individuals by nature so anti-social as to be a perennial danger to their fellow men. ‖

* Ibid, pp. 28, 42.
† Ibid, Appendix 18, Table D. pp. 130-143.
‡ Ibid, p. 28.
§ Ibid, pp. 132-3.
‖ As an example of such take the poisoner Palmer, as described by Sir James Fitzjames Stephen in "A General View of the Criminal Law of England," p. 272.

PART IV.—PATHS OF CHANGE.

It is abundantly evident that the causes of crime above indicated have their root deep in our existing social organization. Any adequate preventive measures must be inextricably bound up with such wide issues as security of employment, a living wage, housing and sanitation, and national responsibility for the nurture and training of youth, for the care of the feeble and sick in body and mind, and for the prevention of destitution.

Furthermore, the difficulties created by existing law are, as the Prison Commissioners observe, "well-nigh insuperable." Our Common Law is an obscure tangle of custom and precedent ; our confused mass of Statutes, Bye-laws and Regulations, sometimes actually provocative in character, is bewildering to the most astute of lawyers, and incomprehensible to the plain citizen.

These large issues can be but alluded to here, gravely as they affect the causes of crime. We pass to the attempts now being made to transform the penal system itself from a mechanism aiding and abetting the manufacture of criminals, into an agency for the prevention of crime and the reclamation of the erring.

A burning question of the moment is the length of sentences. If crime is to be prevented by effectively segregating or reforming criminals they must be put, and kept for some considerable time, under skilled care and supervision, directly they first begin to go wrong ; but to inflict long sentences of punitive imprisonment for trivial offences is sheer cruelty. Here lies the crux, and the nation for the nonce is Mr. Facing-both-ways. Nevertheless many changes now in progress are heading straight for the transformation of definite terms of rigorous imprisonment apportioned to the heinousness of the offence into indeterminate terms of humane institutional or external treatment apportioned to the needs of the offender. Such changes fall mainly into two divisions. (I) Further classification and correlative specialized treatment, accompanied by mitigation of the hardships of imprisonment in general. (II) Improvements in official administration.

I.—Classification and Special Treatment.

The Probation System.

The probation system, "a system of liberty under supervision," originated in Massachusetts, U.S.A., about 1880, for children, and has now been adopted in at least nineteen of the States. It was recommended strongly at the Prison Congress at Buda Pest, September, 1905, and by the Probation of Offenders Act (1907) came into force in England, January, 1908. By this Act an offender may be discharged, and enter into recognizances to be of good behavior, being liable to be called upon for conviction and sentence at any time during the next three years.

The system properly worked is primarily educational rather than punitive. It is an elastic combination of officialism and philanthropy, and therefore depends for its success mainly on efficient administration. The offender is usually placed by the magistrates under the

control of a specified probation officer, who has to be obeyed, who may make compulsory regulations, and who reports monthly to the magistrate. In America, in places where it is worked to great perfection, 70 to 90 per cent. of successes are claimed for the system.

It appears from the criminal statistics for the year 1909 that 8,962 persons in England and Wales were put on probation under the Act, of whom only 624 had subsequently to appear for sentence. Of these 133 were discharged, and only 184 were ultimately sentenced to imprisonment, the others (307) being variously dealt with—in many cases sent to homes or reformatories. Of the total number placed on probation 6,862 were males and 2,100 females. Amongst the females 394 were less than 16 years old, 665 between 16 and 21, and 1,041 above that age.*

In its main idea the probation system is almost a return to the law of Anglo-Saxon England, in many ways superior to our own, where the community, i.e., the hundred or the kindred was held responsible for the good behavior of the individual. Modern society is too complicated for an exact return to this idea, but under the Probation Act the community deputes its duties to its representative, i.e., to the probation officer, because that is the best way in which, as a society, it can fulfil its duty to the unfit. And the probation officer who understands the duties of the office will see that the family, i.e. the parents or guardians are made to fulfil their duties. In the case of young offenders the parents quite as much as the children are "put on probation." Working through the family and the home this system gives the unfortunate a strong friend from outside who can often provide education and training and employment. It is better than prison from the economic as well as from the humane point of view, for the offender is not removed from work in the outside world, so need not be maintained by the State, nor is the wage earner's family thrown upon the Poor Law. There is no criminal taint, no loss of status, no association with other offenders ; on the contrary in the most successful cases the whole tone of the home is raised. The system aims at making both the unit and the family more useful to society.

To do all this successfully the probation officers must be experienced men and women with insight and tact. They must combine force of character and firmness with gentleness and sympathy. In London existing agencies, such as Mr. Wheatley's St. Giles's Christian Mission, the Police Court Mission of the Church of England Temperance Society, and the Church and Salvation Armies, undertake the greater part of the probation work, in which, on the whole, they seem to have great success. There is, however, room for development and improvement in the system, especially in two directions :—

(a) Pressure brought to bear on magistrates, especially in country districts, to make use of the Act and, except for the very gravest offences, to refrain entirely from sending to prison any person under twenty-one, or any first offender.

* Criminal Statistics for 1909, pp. 166, 167, Table 4, III.

(b) Improvement in the training, salary, and status generally of the probation officer, and the appointment of a larger proportion of women.

It seems possible in the future that an increasing number of men and women with a wide outlook and greater culture may find in this work their true vocation. In the United States of America it is often taken up by settlement workers.

Reformatory and Industrial Schools.

When all possible use has been made of the probation system, there will still remain a certain number of boys and girls who are homeless or "incorrigibles." Such children are now sent to industrial schools and reformatories. By the Children Act of 1908 reformatory is to be preferred to prison for all young persons (fourteen to sixteen years), no child under fourteen is to be sent to penal servitude, and sentence of death may not be pronounced on anyone under sixteen. Practically, therefore, imprisonment is abolished for all girls under sixteen, and for juvenile adults (sixteen to twenty-one) the Borstal system is now in force.

Borstal System.

Amongst the 10,380 male and 1,163 female juvenile adults convicted during the year 1910-11, 489 males and 35 females were selected for treatment in Borstal institutions.*

The system is so called from the village of Borstal, near Rochester, where the primary institution stands. The ruling principle is training—physical, mental, and manual. Much use is made of physical drill, of work in the open air, of lectures, of music, instruction in skilled trades, and education generally, and of progress from grade to grade. The upper grade, "Blues," dine in a large hall, sleep on spring mattresses in dormitories, and play cricket or football on Saturday afternoon. The food, though plain, is plentiful, and apparently appetizing. There is nothing degrading in the routine; on the contrary, everything is uplifting. The inmates do not show the same recidivist tendency as ordinary prisoners because they have been taught to desire "something better." The Governor of Borstal reports 82 per cent. of his boys as satisfactory, and of the 303 youths discharged last year only 13 have been reconvicted. Since July, 1909, this institution has ceased to rank as a prison, and four similar institutions for youths have been opened, as well as one at Aylesbury for girls. They are not meant for first offenders, but to reclaim young people of really bad character. Those in Borstal last year averaged about three previous convictions apiece.†

Offences of Borstal Inmates, 1910-11.

	Males.	Females.
Against persons	11	1
Against property with violence	219	—
Against property without violence	214	—
Malicious injury to property	6	1
Other offences	9	33

* Report of Prison Commissioners, Part I., 1910-11, p. 24.
† Ibid., Part II., p. 192.

Sentences of twelve months are insufficient to reclaim young hooligans who on arrival are practically below the normal, physically and mentally. Sometimes it takes eighteen months to make any impression. "There are many boys here whose wits are dulled by neglect and bad treatment, and this is the first time they have experienced a combination of kindness and discipline."* Two years is the minimum useful sentence, and three is far better; but last year 150 of the Borstal boys were sent for less than two years. The Medical Officer is more and more struck by "the importance of physical unfitness as a determining factor" in the downfall of these youths.† The feeble minded or incorrigibly vicious are not retained in Borstal institutions.

Aylesbury Borstal for Girls, 1910-11. (Started in August, 1909).

In custody at the beginning of the year	23
Received during the year	35
Recommitted (forfeiture of licence)	2
Total ...	60
Released during the year	34

Average age 18 years and 7 months. Education—12 had reached Standard IV, and two Standard VII at school. None were wholly illiterate. (The majority of Borstal youths had been in Standards II. and III).

Employment: 11 needlework, 8 cleaners and jobbers in and about the prison, 7 gardeners. It is hoped to add training in laundry work and cooking. The Borstal girls like hard manual labor better than sewing, and "it is surprising to see the vigor they put into rough work. They are full of energy and apparently tireless." They enjoy drill and gardening, and the medical officer notes the marked effect of physical exercise in improving not only the physique and carriage, but "mentally their power of attention and concentration." The chaplain has been teaching history, geography and other general subjects, and finds the girls "quicker and more elastic mentally," "with much improved powers of observation and thought."

"A minimum of three years is needed to eradicate bad habits of want of self-control and inconsequence caused by years of bad environment," but only five of the girls were committed for this period, and 12 of them for less than one year."‡

Modified Borstal Rules in Local Prisons.

This experiment began in 1900, and by the Prevention of Crimes Act (1908) all juvenile adults (16-25 years in this case), except those sentenced to less than one month or more than three years, are dealt with, as far as possible, on Borstal lines under the superintendence of a Special Borstal Committee. Those sentenced to more than four months are sent to special collecting centres. During 1910-11 there were 1,810 juvenile adults treated under modified Borstal rules in local prisons, and of the 651 discharged from special centres, 56 per

* Ibid., Part II., p. 200, from Report of Governor of Feltham Borstal Institution.
† Ibid., Part II.
‡ Ibid, Part II, pp. 188-90, Report of Officers of Aylesbury Borstal.

cent. are known to be doing well, and only 8 per cent. are known to have been re-convicted.*

Prisoners Aid and After-Care Associations.

Under the Borstal system every case is carefully followed up after leaving the institution by the Borstal Association. There are also voluntary committees, certified by the Home Office, for prisoners' aid at most local and convict prisons. A sum of £7,500 was recently assigned by the Chancellor of the Exchequer for the development of this work in relation to convicts, and since April, 1911, after care for them has been undertaken by one central agency called the "Central Association for the Aid of Discharged Convicts," which represents the Government and various Prisoners' Aid Societies, including the Church and Salvation Armies, and the Borstal Association.† It will henceforth exercise supervision over the discharged convict. The hated ticket-of-leave system is abolished. A prisoner who has earned a licence which entitles him or her to remission of sentence, is removed from all connection with the police, as long as he or she behaves properly. The Central Association has been at work too short a time for any result to be chronicled, but it should be remembered that the work of obtaining employment, lodging, etc., for discharged prisoners, and giving them encouragement to make a new start is quite as important as that of the probation officer. In this work women are taking a large share.

Preventive Detention.

The habitual criminals who, under the Prevention of Crime Act, 1908, constitute the special convict class (B) should rather be termed "professionals." The special treatment was intended for those "competent, often highly skilled persons who deliberately, with their eyes open, preferred a life of crime and knew all the tricks and turns and manœuvres necessary for that life." By the new rules (February, 1911) the criminal presented by the police to the Director of Public Prosecutions for preventive detention, must be over thirty years of age, have already undergone a term of penal servitude and be charged anew with a substantial and serious offence. Convicts under preventive detention cannot earn a licence for any remission of sentence, but must serve their whole time. Instead they earn special privileges in prison, where they are kept under separate rules. Since the Act came into operation 250 males and 3 females have been received in this class.‡

The experiment is of great interest to criminologists and penal reformers. It is a test of the curative effect upon healthy but anti-social persons of prolonged segregation, and also of segregation under conditions deliberately intended not to produce suffering, but to reform.

The Home Office has also recently been endeavoring to mitigate the suffering of imprisonment for convicts in general. The monotony

* Ibid, Part I, p. 25.
† Ibid, Part I, pp. 100-1.
‡ Ibid, pp. 113-6.

for long sentence prisoners is relieved by periodical lectures and concerts. The Commissioners in their latest report mention with gratification the pleasure (Oh, shades of our grandparents !) which the convicts take in these entertainments. Aged convicts have been placed in a special class and allowed some comforts.

Inebriates.

"Over one-half of the women and nearly one-third of the men sentenced to imprisonment in this country are committed for drunkenness, and repeated convictions in both cases, and especially in the case of women, constitute one of the saddest and most unprofitable features of prison administration."* The Inebriates Act of 1908 was an attempt to separate habitual drunkards from other offenders for curative treatment. It provided for the establishment of two classes of institutions, certified reformatories and state reformatories. Any person convicted of drunkenness four times in one year may be detained in one of these institutions for a period not exceeding three years. Those with a three years sentence are usually liberated at the expiration of two years and two months, and if they break out again are sent back to finish the remaining ten months.

The scheme as hitherto administered has turned out a costly failure. The cures are few, the drawbacks many. A woman, for instance, may be liberated to find her home broken up and herself alone and adrift. Two cases were reported recently of women who within three months of their discharge from an inebriate reformatory were re-committed in a state of pregnancy and remained comfortably housed until after confinement, when they were once more allowed to depart, their fatherless babies being sent to a children's home. Such a system is obviously faulty both from the moral and economic point of view, and many magistrates are refusing to make further use of inebriate reformatories. The state reformatories at Warwick (men) and Aylesbury (women) were intended for drunkards convicted of other crimes but have become scrap-heaps for the "weak-minded, degraded, and more or less irresponsible" persons found unmanageable in certified reformatories. The Medical Inspector of Prisons has some grave words to say of the danger to society of losing all hold over these unfortunates "simply because a sentence happens to have expired."† The period of detention in such cases should be indeterminate, and the inebriate on release should be placed in the charge of a probation officer. Mental deficients should not be classified or treated with inebriates, but permanently segregated with those afflicted in like manner.

Alcoholism is pre-eminently a "crime" that can only be effectually checked amongst the poor, as it has been amongst the rich, by a change both in conditions and in opinion. Imprisonment is worse than useless as deterrent or cure. So are fines as at present levied upon family necessities rather than upon the offender's drink money.

* Report of Prison Commissioners, 1908-9, Part I.
† Report of Prison Commissioners, 1910-11, Part I., p. 57.

Possibly home treatment under the care of a probation officer, combined in some cases with compulsory work or physical drill, might give the best chance of reformation to many delinquents in their noviciate.

The Mentally Unsound.

About 400 feeble-minded prisoners are received by local prisons each year. "For the last four or five years a record has been kept of their convictions, etc., and there are now nearly a thousand individuals on this register," writes the Medical Inspector of Prisons, in his report for 1909-10. In 1910-11 he says "the distressing feature of conviction and re-conviction of weak-minded prisoners shows no abatement"; and the Commissioners again urge their removal from prison to special institutions under medical care.

An attempt is being made to segregate males of unsound mind (not certified lunatics), sentenced to penal servitude, at Parkhurst Convict Prison, and to study them carefully. The medical officer reports 120 convicts classified as weak-minded, and 27 others under observation. The following extracts from his report need no comment.

Classification of 120 weak-minded convicts: — Congenital deficiency with epilepsy 10, without epilepsy 36, imperfectly developed stage of insanity 26, mental debility after attack of insanity 13, senility 3, alcoholic 9, undefined 23.

List of crimes for which they have been sentenced to penal servitude:—False pretences 1, receiving stolen property 2, larceny 24, burglary 13, housebreaking 19, blackmailing 1, manslaughter 5, doing grievous bodily harm 2, wounding 7, shooting 3, wilful murder 10, rape 2, carnal knowledge of little children 8, arson 17, horse stealing 3, killing sheep 1, obstruction on railways 1, unnatural offence 1.

Of these 62 committed their first crime before the age of 20, and the total number of convictions against the whole 120 feeble-minded convicts amounts to 91 penal and 1,306 other.*

At Aylesbury the feeble-minded convict women are also segregated in a special ward (daily average 12 during 1910-11).

There is, however, as yet no legal enquiry before conviction as to the pathological cause of crime, and these hapless creatures are still subject to penal discipline in convict prisons, and are discharged when their sentence is served; whilst in local prisons they still drift ceaselessly in and out. It is a crying social need to retain under permanent humane supervision beings whom it is as cruel to punish as it is dangerous to society to leave to their own devices.

Imprisonment in Default of Fine.

In cases where a fine is imposed time should always be given for its payment.† In 1910-11, of the total number received on conviction 84,885 (or 50 per cent.), 60,386 males and 24,499 females, were committed in default of fine. Obviously there is every reason to avoid sending persons to prison who fail to pay fines through poverty, and who might do so if given a reasonable period in which to earn or borrow money. To refuse them time is economically unsound, and increases the disparity of treatment of rich and poor. It should

* Ibid., Part II, p. 219.

† This is one of the reforms which the Home Secretary promised in 1910 to inaugurate at once.

be noticed that there is not the same law for rich and poor in this matter, for the fine is imposed in proportion to the offence committed, and not to the income of the offender. A fine of 10s. to a work girl travelling without a ticket would equal £10 or even £1,000 to the careless rich committing the same offence, though the penalty imposed would be nominally the same; and, as a matter of fact, in many cases, the girl would go to prison, which entails her moral and economic ruin, while the rich man would not even be caused a momentary inconvenience by the payment of his fine.

Awaiting Trial.

It is obviously advisable to avoid any association of the potential criminal with criminal surroundings. Children's Courts are a move in the right direction. It is a regulation of the Children Act, 1908, that the trials of boys and girls under fourteen must be held in a court separated by place or day from that used for adult offenders. Children must also now be kept apart from adult offenders during detention; but it is very undesirable that young girls and boys should be kept in gaol on remand for long periods, "awaiting trial," as is now the case, even though ultimately they may not be committed to prison. There can be very little distinction in the mind of a girl as to whether she is technically undergoing a sentence of imprisonment, or only awaiting a trial at which she may be acquitted, especially as her treatment in gaol differs comparatively little from that of a convicted prisoner. She obtains that familiarity with the inside of a prison which above all things ought to be avoided.

The whole system of rigorously confining accused persons in such a manner as to cripple their mental activity will presently be recognized as an arrant injustice.

The classification of offenders and the break up of the prison into a series of specialized institutions and services to deal with various classes has begun, but the movement has still far to go.

II.—Improvements in Administration.

The Need for Special Training.

Changes of method such as those above indicated carry with them a need for the special training of officers of all grades connected with the penal service. There are now two grades for wardresses as for warders, and a training school for female officers has been formed at Holloway, where probationers are to be taught hygience and Swedish drill, and some of them educated as technical teachers. There is no reason why the profession of prison wardress should not rank as high as that of trained hospital or asylum nurse. What is needed is that a woman, with a vocation like that of Florence Nightingale, shall come forward and show by her example that work in prisons is of equal importance with the tending of the sick, or the care of the mentally afflicted.

The post of prison doctor cannot satisfactorily be held by one who practises outside, as it requires very special study and training in pathology and mental science, and should give scope and work enough for a full-time post. In America criminal laboratories are

being established for research into the pathology of crime. There are in this country men well equipped to undertake such work, and if, at the same time, statistics could be collected on scientific lines, much might be done towards elucidating the problem of recidivism. These laboratories could be utilized as lecture centres for the training of prison officials. At present only the medical officers are required to have any scientific training at all, and it is quite possible that even they have never studied criminal pathology or psychology. Public opinion should be educated to require at least as much scientific knowledge and special experience from prison officials as from the head and staff of a lunatic asylum.

The absence of specialized preparation for dealing with the delicate and difficult problems of criminal psychology is even more painfully apparent on the bench than amongst prison officials. Admirably efficient as the English judge usually is in eliciting evidence and procuring a just verdict, when he comes to consider the sentence, he is nearly always as complete an amateur as the average magistrate, who knows nothing of criminology or of prison life. Moreover, the whole bias of the English law of criminal evidence (which at every point insists on accentuating the facts of the particular crime and not drawing inferences from the antecedents of the criminal) handicaps the judge. He is led thereby "to make the punishment fit the crime," whereas the whole work of reform is to make it fit the criminal. Most of our judges are either "merciful," which means they revel in short sentences, or "stern," which means they give flogging when they can. The judge's work might well stop when the verdict is found, and sentence be passed, after careful, unhurried consideration of the record both of the case and of the criminal, by officials whose experience and expert training is of another sort.

The Need for Women Officials.

It is exceedingly desirable that women should be on the medical staff of prisons where women are confined. The medical woman Inspector has already done much to improve the conditions of women prisoners, and it is greatly to be hoped that this appointment will be followed by those of other women as medical officers as well as inspectors. The office of spiritual or moral adviser also is one which some women are particularly well qualified to fill in a prison. Again, in a woman's prison it seems desirable that the governor should be a woman. In the small local prison at Aigle, in the Rhone Valley, a woman is governor in charge of both men and women prisoners; why not at Holloway or Aylesbury, where all prisoners are women? And why is not one at least of the Prison Commissioners a woman?

Women are already employed in this country in the detective service. When the whole police force is employed more extensively in the prevention than the detection of crime, as it surely will presently be, women's help will be increasingly needful. A women's auxiliary to the police force, as already in operation in Germany, would be invaluable.

Undoubtedly where girls or women are concerned in cases connected with indecency or immorality the courts might well be cleared of all men, except those officially concerned, as is done in children's courts; but if any of the public are allowed to remain, the court should not be cleared, as is now the case, of all women. It is obviously unfair in such cases that a woman should be obliged to give evidence or to be tried alone before a general audience of men. It would be an advantage if it were made compulsory for a police court matron or woman probation officer to be in charge of young women offenders to prevent their contamination by hardened criminals, and to be present when their cases are tried. It has been suggested that there should be special courts for women as for children, but these will hardly serve any useful purpose unless there are women magistrates and the women's auxiliary to the police force to deal with women and children, innovations which would do more than anything perhaps for the reform of police court procedure, especially as it concerns women and young persons. It seems probable that women would be more likely than men to understand and to enter into cases concerning their own sex. The same qualities which have made women invaluable in poor law, educational, and municipal administration, and in the large and increasing amount of voluntary work which they are doing in connection with prisons, are likely to make them invaluable on the magistrates' bench.

It is probable that in the future women will be appointed as judges and magistrates, as well as summoned to serve on juries; and this is, in our opinion, a consummation most devoutly to be wished in the interests of society.* There is no path of change along which women are more particularly concerned to press forward than that which leads them to an official share in judicial procedure and in the administration of the penal system.

* A measure qualifying women to exercise judicial functions is now before the Norwegian Parliament. In Mrs. Wolstenholme Elmy's pamphlet, "The Criminal Code in Relation to Women," 1880, the cause of the disuse of the ancient "jury of matrons" is described.

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Concerning the Status of Political Prisoners.

THE object of this pamphlet is to draw public attention to the very serious problem involved in the treatment of those advocates of Women's Suffrage who have lately been imprisoned for committing breaches of the law in the course of their agitation. The writer, it should be stated, by no means approves of everything which the people concerned have done, and he is, in general matters, a supporter of the Government which is responsible for their treatment. He will, therefore, be acquitted by all reasonable readers of any disposition to invent or to exaggerate any part of his case.

The facts are briefly as follows: In March last some 200 women took part in an extensive attack upon the windows of buildings in London, most of them being the windows of private persons. This outbreak was part of a campaign of disorder, the wisdom or unwisdom of which is not for the purposes of this pamphlet material. It was unquestionably the duty of the Government to maintain order and to punish those who were guilty. Unfortunately, the authorities dealt with the matter as if it were an ordinary case of crime. The women who were found guilty were sentenced to various terms of imprisonment, in many cases with hard labour, and were treated substantially as if they had acted out of private malice and without regard to the actual motive which impelled them. In the judgment of the writer the authorities should have taken that motive into consideration, and he is fortified in that opinion not only by argument but by precedent, and

not only by general precedents to be observed in the history of England, but by particular precedents in the history of this agitation.

In the first place he would urge that the women could rightly claim to be regarded as political, and not as ordinary offenders against the law. The exact limits of the term "political prisoner" are hard to define. But it seems reasonable to claim that it includes any person who breaks the law not out of a general hostility towards society, but out of some desire to improve its constitution.

And here I cannot do better than quote a recent statement of Mr. A. P. Stanton, published on April 26th of this year. He points out:

> (1) That sedition is a typical political offence, and the Prison Act, 1877, Sec. 40, provides that a person convicted of sedition or seditious libel must (not may) be treated as a misdemeanant of the first class.

Unquestionably, then, the Law does recognise political offences.

> (2) That the acts of the Suffragists are "offences of a political character."

The demonstration of this can be found in the case of In re Castioni, reported in 1891, 1 Q.B., 149. In that case, the Court was considering the meaning of Sec. 3 of the Extradition Act, 1870, already cited, and held that an offence is political if "it is incidental to and forms part of political disturbances." Mr. Justice Denman says, p. 159, "The question really is whether upon the facts it is clear that the man was acting as one of a number of persons engaged in acts of violence of a political character with a political object, and as part of a political movement and rising in which he is taking part." If so, the offence is political, but if the offender's motive is to satisfy private spite or to gain some personal end it is an ordinary offence. He also says, p. 158, that the fact that the act was not "a wise act, in the sense of being an act which the man who did it would have

been wise in doing, with the view of promoting the cause in which he was engaged" does not prevent the offence from being a political one.

In that case the Court, although they thought that the prisoner had shot dead a member of a foreign government, refused to surrender the fugitive to his country, and set him at liberty on the sole ground that his offence (if any) was political.

In a letter to Professor George Sigerson, M.D., Member of the Royal Commission of Prisons, 1887, and referred to by Professor Sigerson in an article published on April 19th of this year, Mr. James Bryce, then Professor of Civil Law at Oxford, now Ambassador at Washington, says: "We all feel the difference between the ordinary criminal and those whose treatment you describe . . . ordinary prison discipline is incomparably more severe and painful to the persons sentenced for offences of this nature than it is to the ordinary thief or forger."

It is interesting also to note in this connection that in 1872 an International Prison Conference was held in the Hall of the Middle Temple, London. At that Conference the representative of the Italian Government, Count A. de Foresta, proposed that persons guilty of offences not implying great moral perversity should be kept in simple detention, apart from common criminals. It was stated that Germany had already recognised this principle of *Custodia Honesta*. The resolution was carried unanimously.

The difference between a man who breaks a window because he wishes to draw public attention to some obnoxious Act of Parliament, and the man who breaks it because he has some grudge against the owner, or because he wants to steal the goods behind it, is obvious. The act may be equally unwise, equally dangerous, equally detrimental to the owner of the window. But as regards the psychology of the man who breaks it, that is to say, the morality or immorality of his action, there is a vast difference. The one wishes first and last to injure; the other

wishes ultimately to do good. It is that psychological difference to which the statesman, if not the lawyer, must always pay attention.

It would almost be sufficient to base the claim for different treatment in the two cases upon grounds of expediency. Punishment may in the one case be a deterrent. In the other case it can be nothing but a provocation. The person who acts out of spite against society is forcibly reminded that if he so indulges his ill-temper, society will defend itself. He calculates the price of indulgence, and, if he is wise, comes to the conclusion that it is too great. He refrains from repeating his offence, and others, who might be inclined to imitate it, are similarly deterred by the example. In the political case the effect of punishment is entirely different. A man resolves to break a window to draw public attention to his political grievance. The Government is obnoxious to him because it supports some unjust law. Does it become less obnoxious when, in addition to supporting that unjust law, it inflicts some personal suffering or humiliation upon himself? Obviously it does not. Short of wearing him out physically by repeated and prolonged punishments, it can do nothing but exaggerate that very habit of mind from which his original offence arose. The practical difficulty becomes enormously greater when the offender is not isolated, but is a member of a considerable organisation. Every penalty inflicted upon him becomes a stimulus not only to himself, but to his associates. It is pretty certain that no physical punishment can suppress, except while the guilty persons are actually in prison, disorder which arises from political discontent. Its general result is rather to make the discontented persons more bitter and less tractable, and to increase the gravity of the disorder with which the Government is faced. Political wisdom, as well as humanity, therefore prescribes that a person who commits such a political offence should be treated differently from the ordinary criminal.

There can be no reasonable doubt of the rightness of this practice. But the writer would

also ask his readers to consider that he is not preaching any novel or revolutionary doctrine. He asks only that principles which have often been observed by English Governments should be observed once more, and he finds most forcible arguments in his favour proclaimed by members of the Government itself. Twenty or thirty years ago political disorder of a sustained kind was confined, in the British Empire, to Ireland. Irishmen, otherwise of blameless character, were often concerned in advocating or assisting in disorders of the same nature and frequently of infinitely more dangerous degree than this breaking of windows. English Governments then, as now, enforced the law and imprisoned the offenders.

In the controversy about the conditions of their imprisonment the Liberal Party insisted upon the distinction between political and other offenders to which the writer has referred. Mr. William O'Brien, an Irish Member of Parliament, was convicted of taking part in some illegal proceeding. He was shaved like a convict and forced to wear prison clothes. Speaking at Portsmouth on the 14th February, 1889, Mr. John Morley (now Lord Morley of Blackburn) said: "These indignities may be excessively amusing, but then they happen to have the effect of irritating, exasperating, and exciting the population whom it is our business to pacify and reconcile. . . I have said now, and I will never cease to say, that the treatment of Mr. O'Brien was brutal and senseless."

Speaking in the House of Commons on the 1st March, 1889, Mr. Gladstone said: "I know very well you cannot attempt to frame a legislative definition of political offences; but what you can do and what always has been done is this: You can say that in certain classes of the imprisoned a person ought not to be treated as if he had been guilty of base and degrading crime. . . Though sensitiveness to indignities of this kind may be a matter on which men will differ according to

their temperament and their ideas, yet such sensitiveness is rather to be encouraged than to be repressed, for it appertains to that lofty sentiment, that spirit which was described by Burke in animated language when he said: 'The spirit which feels a stain like a wound.'" On the same occasion Mr. Asquith said: "He has subjected them—men, by his own admission, mistaken and misguided if you please, but still the victims of a genuine if perverted enthusiasm—to the lot of the very commonest felons, declining to exercise in their favour the power of relaxation expressly given to him by statute, and which he has himself used in a particular class of case." Argument of this kind at last produced its effect, and special privileges were conferred upon the Irish prisoners.

Even more weighty is the precedent of the case of the Jameson Raiders. The offence in that case was incomparably more serious than anything which has been done by Suffragists. Many lives had been lost. The feeling between this country and two foreign States had been embittered, and there was grave danger of war, involving the loss of more lives and the expenditure of millions of public money. The raiders were sentenced to various terms of imprisonment, some of them no longer than the terms inflicted upon some of the women window-breakers. None of them were sentenced to hard labour. All of them were treated as first-class misdemeanants, and were granted the greatest possible facilities in the way of clothes, books, newspapers, correspondence, and visits from friends. *The Times* newspaper, on the 1st August, 1896, referred to these privileges with great satisfaction, and said: "The common-sense of the public at large draws a broad distinction between the criminality of an offender against the Foreign Enlistment Act and that of the vulgar law-breaker who seeks his own enrichment or the satisfaction of his private vices. . . We venture to say that no man of average sense and generosity, however strongly he might reprobate the incursion into the Transvaal, could contemplate without a

sense of humiliation the infliction upon Dr. Jameson and his companions of all the degrading penalties rightly reserved for self-seeking knaves and law-breakers. The law, as the Lord Chief Justice said in summing up, was violated and had to be vindicated, but as "there are vast differences in the moral aspect of violation, so there ought to be marked differences in the modes of vindication." These principles and their application may have been unsound under conditions where they might be gravely misunderstood by an outraged and resentful foreign Government. But they were adopted almost unanimously by the whole nation. If we adopt them in a case like that, how can we refuse where the offence is infinitely less grave in the first place, and where nobody in the world is concerned except ourselves?

But the case is made overwhelmingly strong by precedents created by this Government and its predecessors in its treatment of the Suffragists themselves. In the earlier stages of the agitation, Mr. Herbert Gladstone, then Home Secretary, removed a few women Suffragists from the second division to the first, thus drawing a clear distinction between them and the ordinary prisoners. But when he found that the disorders persisted, he adopted the policy which his colleague, Lord Morley, had once denounced as "brutal and senseless." The women were on subsequent occasions kept in the second division among ordinary felons. As a protest against this treatment some of them refused to eat food. Having originally roused them by the unnecessary humiliation of second division imprisonment, Mr. Gladstone proceeded to the extreme of folly, and inflicted upon them further and additional indignities. Those who refused to eat were fed by force. This involved, in many cases, the insertion of a rubber tube in the mouth or nostrils of a woman, who was forcibly held down by wardresses, in order that food could be forced into her whether she would or not. The process was dangerous, and two men who were recently subjected to it actually died in consequence of it. Another man, himself a Suffragist

prisoner, though a strong and powerful athlete, after four weeks of this treatment became temporarily insane. But, in addition to being dangerous, forcible feeding was painful and degrading. The mouths and nostrils of the patients often became inflamed and swollen, their hearts were strained, and their digestions impaired, their minds were filled with unspeakable loathing and disgust. The total effect of this treatment was the injury which it did to the women, and it is hard to understand how any doctor could be found to carry out instructions that involved such injury and degradation. The agitation was not quelled for a moment. On the contrary, its temper was incredibly stimulated, and when Mr. Herbert Gladstone was superseded by Mr. Winston Churchill, the Government adopted what was at once a wiser and a more humane policy.

This policy was embodied in a new Prison Regulation, Number 243A. This Rule was in the following terms :—

> "In the case of any offender of the Second or Third Division, whose previous character is good, and who has been convicted of, or committed to prison for, an offence not involving dishonesty, cruelty, indecency, or serious violence, the Prison Commissioners may allow such amelioration of the conditions prescribed in the foregoing rules as the Secretary of State may approve in respect of the wearing of prison clothing, bathing, hair-cutting, cleaning of cells, employment, exercise, books, and otherwise. Provided that no such amelioration shall be greater than that granted under the rules for offenders of the First Division."

The effect of this was explained by Mr. Churchill in the House of Commons, on the 20th July, 1910. He said : "That rule enables the Home Secretary, in virtue of the various Acts which he has to administer, to relieve certain prisoners not guilty of any acts involving moral turpitude. I propose to relieve them of the necessity of wearing prison

clothing, of being specially searched, and of being compelled to take the regulation prison bath. I also propose to enable the offenders in the Second Division to be permitted, under certain circumstances, to obtain food from outside, to exercise freely, both in the morning and in the afternoon, to converse with other prisoners when taking exercise, and to have at their own expense such books, not dealing with current events, and such literature as are in accordance with the public interests." In answer to a supplementary question, he added: "By moral turpitude I mean offences involving dishonesty, indecency, gross violations of morality, or cruelty. . . I have given instructions that all persons committed to prison for passive resistance, and all persons committed to prison as Suffragettes are, as a matter of course, in the absence of special circumstances, to be accorded the full benefit of the new rules." The rule itself did not specially mention Suffragists. But it was drafted with their case in view, and it was expressly made applicable to them by Mr. Churchill. Here we have a clear and emphatic recognition of the difference between the Suffragist and the criminal. Unfortunately, Mr. Churchill had more imagination than his successor, and in folly and stupidity Mr. McKenna has shown himself the equal of Mr. Herbert Gladstone himself.

What enormously aggravates the wantonness of Mr. McKenna's recent conduct, and proves his personal responsibility, is that he at first showed himself ready to imitate his immediate and not his remote predecessor. In December, 1911, a disturbance took place, in the course of which several windows in private offices and shops as well as in Government buildings were broken. For these offences several women were sentenced to various terms of imprisonment. Every one of them was accorded the benefit of Rule 243A. No distinction was drawn between women who broke windows and women who did not, or between women who broke the windows of Government buildings and women who broke the windows of private persons. All the

Suffragist prisoners, without a solitary exception, were treated as political and not as criminal offenders. This amounted to a clear admission by Mr. McKenna that, in his judgment, even the breaking of windows did not involve "dishonesty, indecency, gross violations of morality, or cruelty."

In March, 1912, another disturbance was accompanied by more extensive destruction of windows. More than 200 women were sentenced on this occasion. They were permitted to wear their own clothes and to talk during exercise. But the majority, who had been sentenced to hard labour or had been committed to the Sessions, were not allowed the benefits of the new rule. Mr. McKenna refused to grant them any of these privileges, thus leaving them practically in the same condition as if Rule 243A had never been passed. His published reasons were two : that some of them had been sentenced to hard labour, and that their sentences were longer than in previous cases. The fallacy of this reasoning is obvious. Rule 243A left the matter to the discretion of the Home Secretary. The moral guilt of these women was of precisely the same kind as that of the women who were sentenced at the end of 1911, and the mere fact that the judges had imposed heavier penalties did not alter it by one jot or tittle. Mr. McKenna was in fact evading his personal responsibility and sheltering himself behind the magistrates. As these had sentenced the women to terms of a vindictive length, he considered himself debarred from employing his own discretion. That is to say, the fact that the judges had stretched their powers to excess was an argument why he should not exercise his own. This pretext did not occur to Mr. McKenna when he had to deal with the Syndicalist prisoners. These men were sentenced to imprisonment with hard labour. He did not urge that because Mr. Justice Horridge had been harsh, he himself ought not to be lenient. Does he discriminate between the two cases, because one affects a large class on whose votes the Government depends, and the other only a small class which, being voteless, may be safely despised?

The natural consequence followed. The women resorted to the hunger strike. The authorities returned to the inhuman cruelty of forcible feeding. A few women, who were in bad health, were released ; the rest were subjected to all the physical and mental agony which the process involved. After some days of torture the process ended in the usual way. Pedantry and dullness were conquered by devotion. The temper of the women was no more to be broken now than on previous occasions. Mr. McKenna gave way at the end, and granted something, though not all of what the women had asked at the beginning. Had he been a wise man he would have made concessions of his own free will, and would have gained credit as well as peace. Being a dull man he was forced to make concessions against his will, and added personal humiliation to his discomfort.

This last experience has clearly demonstrated that the Government has no definite understanding of the conditions with which it has to deal. It does not comprehend that the distinction between the political and the criminal prisoner is a difference of psychology, that it is to be detected in the mind of the prisoner and not in the act for which he is sent to prison or in the length of his term of imprisonment. Each successive Home Secretary has apparently to be thrust by prodigious exertions on the part of Suffragists and their friends into the course which reason and common-sense prescribe. It is manifest that the Government will do as little as it can. The whole record of its treatment of the militant women is a record of dull and unimaginative mis-management. There are indeed other grounds of complaint against it than its stupidity in imposing oppressive conditions of imprisonment. From time to time specific charges of misconduct have been made against prison officials and the police. In one case where a hose-pipe was played upon a woman in her cell, the matter came into the Manchester County Court, and the prisoner recovered damages. In every other case the Government has nominally

inquired into the complaint and has declared it to be unfounded. In no single case has the charge been investigated except by Government officials, and the confronting of witnesses and their cross-examination, without which no satisfactory decision could be made, have apparently been always omitted.

The facts relating to the gravest of all these cases, the treatment of a deputation by the police in November, 1909, have been already published. Any disapproval of the objects of the deputation is no reason why the charges of misconduct against the police should be condemned. The charges are various and specific. Most deal with mere physical violence, such as twisting of thumbs, clutching of throats, and blows on the back. Twenty-nine deal with cases of gross and horrible indecency. On this occasion also, the complainants included many women who are known to the writer, either personally or by repute, to be persons of honest and upright character, and they are corroborated by several witnesses of equal credibility. On the other side there is nothing but the denial of Mr. Churchill, the Home Secretary, which is based entirely upon information supplied to him by the police. Not only did he not examine any witnesses on the other side, but he gratuitously described them as dishonest and their story as mendacious. On the other hand, the Conciliation Committee, composed of fifty Members of Parliament of all parties, who were actually responsible for the publication of the charges, believed them to be at least honest. Lord Robert Cecil and Mr. Ellis Griffith, two trained and experienced lawyers, and one of them a supporter of the Government, personally examined fifteen of the witnesses and came to the same conclusion. No one is bound to accept as proved specific charges against particular policemen. But no one who considers all the circumstances of the case can believe that the general allegations have no foundation in fact. The authority of Mr. Churchill, as he well knew, was sufficient to protect the police against any contemporary outcry. Posterity will be less

subject to his influence. In the entire absence of disproof, it will be bound to conclude that charges brought by persons of such a character and supported by such responsible authority were substantially true, and no little of the condemnation which it will pronounce upon the police will be shared by the statesman who protected them. Such a gross abuse of office has never taken place in this country since the days of Mr. Balfour and Mitchelstown, yet Mr. Winston Churchill in the recent debate on the introduction of the Home Rule Bill, now before the House of Commons, said, referring to the right of citizens to resist oppression : "We desire to redress grievances, not create them, to enfranchise and not to enthral."

It is not possible for the writer to analyse these complaints in detail, from the earlier charges of frog-marching down to the recent imprisonment of Mrs. Pankhurst under conditions which, while Mr. McKenna has declared them to be unobjectionable, were unquestionably of such a kind as within ten days to reduce her to a state of nervous prostration. Upon these points the writer can only say that he is personally acquainted with some of the women who have made these complaints, and that there is not one of those whom he does not know to be incapable of inventing a statement of fact of such a kind. He sees no reason to suppose that the other women are any less credible than his own acquaintances. In the absence of any full enquiry he does not commit himself to any specific detail. But he has no doubt that the official enquiry undertaken by the Government in each case has been utterly worthless, and he declines to accept the acquittal of one official by another official when the charge is brought by a woman for whose honesty and good faith he can vouch. The whole atmosphere of Suffragist imprisonments is one of official solidarity in the face of an unpopular series of accusations. If the Suffragists had behind them as much strong feeling as was behind Dr. Jameson, it would be impossible for the Government to avoid a free public examination. The

writer can only conclude that because the women happen to be in a minority, and above all because they lack the political means of bringing Ministers to account, they are treated with a contempt which would not be tolerated for a moment in the case of men. It is only in the course of a struggle for political freedom that we can estimate the value of it. The Jameson Raiders were supported by voters. The women are not, and the different reception given to their complaints is the precise measure of the importance of the vote for which they are asking. The Government are aware that they can with impunity huddle up these unfortunate affairs, and they take advantage of their opportunities. Power which is safe is always abused.

In conclusion, the writer would repeat and emphasise the main points to which public attention should be drawn. The Government must recognise frankly and fully, and not in the grudging and reluctant spirit which they have always hitherto displayed, that the militant women are engaged in a political agitation, and that when they commit crimes in the course of that agitation they must be treated always and from the first as political offenders. If necessary, this principle must be embodied in legislation, and be no longer left to the caprice of individuals. The humiliations and indignities of imprisonment must, so far as possible, be removed, and above all there must be no repetition of the atrocious process of forcible feeding. The Government must also be prepared in an honest and candid spirit to enquire into the truth of any charges which may be brought against prison officials. Hole and corner investigations must be abandoned. What chance of truth is there in a report which runs through a chain of officials, any link of which may be defective, and finally reaches the public through the Home Secretary, who is himself only another official, and is, besides, opposed politically to the persons who make the complaints? To those of us who are acquainted with the complainants in these matters it is impossible

that every one of the charges should have been fabricated. That authority has once been abused, we know from the Manchester case; and authority which has once been abused must always be suspect. To shelter one official behind another is simply to increase the suspicion and distrust with which all will be regarded. In the interests of the officials themselves, no less than of the women, charges which are made in public must be examined in public.

The writer is fully aware that these are only questions of administration, and that administration cannot cure political discontent. That discontent can only be allayed by legislation. But administration, though it cannot cure discontent, can affect its expression. Good administration sweetens it, bad administration embitters it. Hitherto almost everything the Government has done has been an aggravation, and even their mitigations have been so tardy and so reluctant as to lose half their good effect. In future, let them remember that it is the part of a wise statesman to anticipate rather than to hinder. The concession which proceeds from a wise generosity is a thousand times more valuable than that which is wrested from a cold and niggardly timidity. The Governor who is magnanimous in administration retains at least the respect, if his policy cannot gain him the affection of his subjects; while he who yields to clamour what he refuses to reason gains only contempt for his policy, and that, not alone from his own generation, but with an even greater condemnation, from posterity also.

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LEGISLATION FOR THE PROTECTION OF WOMEN.

By LORD CHARNWOOD.

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LEGISLATION FOR THE PROTECTION OF WOMEN.

In discussions on Woman Suffrage much prominence has been given of late to the question of legislation for the better protection of women and girls from certain offences and dangers. Constant references are made to several matters of law and police with which the great majority of men and women are wholly unfamiliar, and, as is quite natural, a good deal of misconception is betrayed about them.

The following review of this subject may be of use to some of those upon whom the matter has thus been pressed. It will be understood that I express in it only my individual opinions.

I propose to deal (A) with several questions which happen to have been specifically put to me on different occasions about crimes and wrongs which fall within the recognised scope of law and of intervention by the State, and (B) to the more general question, suggested by a good deal of this discussion, whether the distinction now made between private vice and public crime is right, and whether the scope of State action for the repression or discouragement of vice could not be greatly enlarged.

A.

There seems to be an impression not merely that the law (or the administration of law) might be improved, which, of course, is quite possible, but also that these matters have been treated with neglect by the legislature and those concerned with administering the law. This latter impression is a complete mistake. There is no other branch of the criminal law which has received anything like the same careful and earnest attention as this, and if the law itself has not been appreciably altered during recent years, that is chiefly because those who administer it have found it very effective as it stands.

It is well to point out also that though there are differences of opinion on such matters among people with knowledge of the facts, they are quite independent of the difference of opinion upon Woman Suffrage—so far as serious and well-informed opponents or supporters of Woman Suffrage are concerned. Moreover there is on such matters no real difference of sentiment or aim between men and women. It appears that this subject is now frequently discussed among very young and inexperienced women of the richer classes. These young women have recently come, with horror, to a vivid but quite indistinct recognition of the prevalence of vice, and of the intense misery caused by it. They have at the same time learned in a general way that men and women have different temptations, and are apt to judge certain matters by different standards. It seems that they often jump to the conclusion that men look leniently on the acts of diseased brutality or sordid meanness with which this branch of law is concerned. Older women will see clearly enough what a fantastic perversion of the truth this is, and would do well sometimes to point it out to the younger women who talk of these things.

But it is important to remember that there is sometimes a difference of sentiment in regard to such matters between rich people and poor people.

I will now take in order the specific points to which my special attention has been drawn, leaving as necessarily matter for separate discussion the whole subject of the law as to marriage relations:—

1. Affiliation Orders,

i.e., orders by magistrates requiring the father of an illegitimate child to make payment for its maintenance.

Probably the greatest hardships that arise in this connection are such as can only be remedied by philanthropic effort, and not by law. Cases are not infrequent in large towns where a wronged woman has serious need of legal advice before she brings her case into court. It is rather remarkable that there is only one society,* at any rate in the South of England, which makes it its business to help in such cases. That society is badly in want of funds.

It is not to be suggested that the law is perfect. Several recommendations for its improvement have been made by the Poor Law Commission, and share in the practical neglect with which many other of that Commission's recommendations have been received. The short period allowed for bringing an appeal is felt to be an injustice to the man concerned; there are defects in the provisions for receiving the sum ordered which are hard upon the woman; the absence of power to raise or lower, in altered circumstances, the sum once ordered is an injustice to all parties. Amendments on all these points

* "The Associated Societies for the Protection of Women and Children," Haymarket, S.W.

have been recommended by a Committee of the House of Commons. Further alterations in the law have been suggested, but many of them must be considered with much caution. It is well to recall that the benevolently intended provisions of the old Poor Law produced terrible demoralisation in many country villages by making illegitimate children desirable assets to a household. There would be danger of a somewhat similar result (though far less in degree) if legislation were passed, as has actually been proposed, which would confer on illegitimate children a privileged position as compared with legitimate children.

Writing with first-hand experience of one or two country Benches, one would be inclined to say that the law at present works fairly well.

It is sometimes said that poor women are prevented by the expense involved from taking the necessary proceedings to obtain these orders. There is, however, ample power to grant the necessary summonses without charge in any proper case, and this power is, generally speaking, freely used.

A good magistrate's clerk gives a poor woman every assistance in preparing her case and putting it properly before the Bench, and any tolerable Bench of magistrates requires of him that he should discharge this very delicate function conscientiously and considerately.

A casual observer might think that the payments ordered were apt to be too small in amount. But it must be remembered that the men who require a magistrate's order to make them support their own children are seldom either well-to-do or trustworthy ; thus a Bench has always to consider that if it fixes the payment too high, the man is likely to escape from the neighbourhood, and the woman to get nothing at all.

Anybody without actual experience of the matter would probably be inclined to wonder at the number of cases in which maintenance orders are refused. It is not fully realised by anyone unacquainted with criminal courts how prevalent an evil the making of false charges may easily become, and how necessary therefore it is that magistrates should not make orders without being fully satisfied of their justice. It is—and fortunately so—exceptional in such cases that the complainant should be an honest young person, with a good father and mother ; consequently, the evidence in cases of this kind is often very doubtful and perplexing, and cases also are very far from uncommon in which it becomes manifest that a young man has been selected to proceed against, not because he is the father of the child, but because, being honest and industrious, he is likely to keep up his payments. A natural sympathy for a girl or woman in a terrible position might lead one to say that it is a worse risk that she should go without relief than that the relief should be taken from a man who is possibly, but not certainly, innocent ; but a very little thought upon what has just been said shows that this sentiment would have very demoralising effects, from which women would be the chief sufferers.

2. The "White Slave Traffic."

It is desirable to recognise fully the extreme atrocity of the evil against which police administration and philanthropic effort have to be armed, both in respect of the innocence of the victims who may possibly be exposed to it, and of the helplessness of the position to which they may be reduced. It is difficult to be sure how far the worst villainies covered by the phrase "white slave trade" prevail now ; all that need be said is that nothing is so bad

but that some people are bad enough to do it, given a fair chance of gain and of impunity, and that a hideous form of crime which for some time was thought to have been stopped, appears during the last few years to have found new means of escaping detection. It is thus entirely to the good that people should from time to time inquire critically whether law gives innocence the very best protection that it can, and in the light of experience some improvements in the law are now required and are being made. It is, however, a falsehood, without foundation and without excuse, to suggest (as has been done) that the law permits or that the police are in the slightest degree negligent in suppressing crime of this kind, or, indeed, that English law or English law-makers ever were tolerant or wilfully negligent in this matter.

Before going further, it may be well to point out that this branch of criminal law covers a variety of offences (of different degrees of heinousness) of which the common character is that a man or woman is, for the purpose of gain, the go-between for the vices of others or provides facilities for them. The principal Statute dealing with this matter is the Criminal Law Amendment Act of 1885. The passing of this Act was no doubt somewhat hastened by an agitation carried on by the late Mr. Stead, but (slow as Parliament is in almost all matters) the impression that nothing would have been done without public agitation is utterly unjust. The Home Office and an important Committee of the House of Lords had been making full inquiries and preparing the somewhat difficult legislation, which recent experience had suggested, before anything whatever happened to arouse general attention to the matter. Nor is it the case that reform was met with any malignant or crassly obstructive opposition; the one person who opposed it with vigour was the late

Mr. Hopwood, Q.C., M.P., an enthusiastic humanitarian, who took a leading part in repealing those Acts which have with most reason been condemned as degrading to womanhood. He took the position that the existing law was already amply strong enough to meet the needs of the case. Doubtless, he was wrong in this; but it is, further, a complete mistake to suppose that the law of the land had previously treated any of the offences of which we are now speaking as innocent. This branch of law shared the cumbrous and antiquated character common to other branches of law which have no special relation to women, but the one point in which its defects might have been of very serious consequence was of a purely accidental kind. The attention of the Government had recently been called to an abominable system by which certain foreigners had decoyed certain women abroad, and legal authorities feared that in cases of this kind a technical difficulty in prosecuting might arise from the fact that the criminal offence chargeable was completed outside the British jurisdiction. This is, in fact, the sole foundation of truth for the suggestion that the English ever shielded the abominations in question.

The Act of 1885 has from time to time been amended in certain particulars, but the most important object to be obtained (so far as State action is concerned) has been to secure uniformity of law in different countries and concerted action between them. This has so far been secured that all the most important countries have now special authorities (in communication with each other) charged with the duty of suppressing the traffic in question. A Convention has also been drawn up between these countries for the adoption of similar penal provisions against these offences in all of them, and the business of getting this Convention embodied in legislation by all the countries

concerned is proceeding. Negotiations of this kind necessarily require great patience before they can come to a successful issue, but our authorities (as well as those of some other countries) have been quietly and assiduously pursuing this object for some years.

It is certain to anyone who takes the trouble to inquire, that the Metropolitan police authorities are thoroughly in earnest in discharging their task, and they bear testimony to the zealous co-operation which they have met on the part of the police in the seaports and other large towns which are in any way affected by the "White Slave Traffic." It is another question whether the police in every town of the country deal effectively with breaches of the law of a less flagrant and dreadful kind. This is a question of local administration, and local administration varies in its character from place to place. There is, unhappily, no reason whatever, to suppose that the influence of Women's Municipal votes has ever been effectively used to improve local administration where it lies under suspicion in this respect.

The law as it stands is a very effective instrument, but that is no reason for not improving it. The Act of 1885 was drawn up and passed at a time when a strong humanitarian sentiment operated (in many cases wisely, but by no means in all) against all kinds of heavy punishments. Consequently, except where it conformed most closely to the older law, its penalties avoided any possible excess of severity—two years' imprisonment with hard labour being laid down as the maximum penalty for some offences which are generally of an extremely dark kind. It is worth while to urge that, in dealing with a crime in which the element of violent temptation is nothing and the element of cold-blooded calculation is everything,

the brutalising effect of long sentences may be disregarded, and the mere possibility of a sentence of many years of penal servitude might be extremely effective.

But the amendments of the law proposed in the Criminal Law Amendment Bill introduced in the House of Commons by Mr. Arthur Lee are of more practical consequence. A considerable part of them consist of technical or drafting amendments of previous Acts which it is needless to explain here. The most important of them, however, gives the police the power of summary arrest in certain cases where a magistrate's warrant is now required. This power has now become imperatively necessary for dealing with a most villainous offence which is extremely likely only to be discovered at the moment when the offender is about to leave the country. The present writer is convinced of the merits of this provision and of the Bill generally; he has, moreover, been actively concerned in an attempt to hasten the passing of the Bill; he is, therefore, perhaps entitled to insist that the refusal, of which complaint has been made, to let this Bill pass undiscussed, was entirely justified. Not to mention other provisions of the Bill, an extension of the power of summary arrest clearly ought not to be granted by Parliament without consideration of how it will work. The Bill appears now to be certain to pass with a few reasonable amendments. In the discussions which have taken place upon it the opposition was based on precisely similar grounds to those on which the Bill of 1885 was opposed. Its few opponents and its numerous supporters have alike included Suffragists and Anti-Suffragists. Its proposer, to whom the chief credit of passing it is due, is a strong Anti-Suffragist. It may be regretted that its main provision was not pressed upon Parliament, by the few who knew the facts, several years ago, but no one

acquainted with the history of the matter will find in it any trace of callousness on the part of Parliament.*

Far more important than any possible strengthening of the law and any perfection of police administration is the work of the philanthropic agencies for befriending girls and young women. The only complete security against the kind of danger of which we are speaking would be that no young woman should be left to go as a stranger to any large town, much less to a foreign country, without being introduced to the care of some responsible agency which will befriend her on her first arrival. Fraudulent advertisements of situations and fraudulent servants' registries are, I believe, important elements in the danger. Among the societies which undertake the needful work of help and protection the following ought to be well known to those who may have cases to commend to their care and (since their work could be extended if their funds were larger) to the charitable public :—The National Vigilance Society, the Young Women's Christian Association, and the Girls' Friendly Society.

3. Offences Against Children.

The provisions of the law in regard to these are of ample severity. In the case of the full possible offence, the penalty may extend to penal servitude for life. The sentences actually imposed in different cases vary greatly according to circumstances. No one without an exceptional experience could hazard an opinion as to their

* It may be well to mention another Bill, the "Prevention of Immorality Bill," now before Parliament. This Bill is in large part a consolidation of existing law, but it includes a number of amendments of a kind requiring very mature deliberation. For example, it contains clauses under which, as they stand, absolutely innocent parents of a young woman who had been led astray would stand in danger of a most cruel charge, and even severe punishment.

general adequacy. Occasionally they would appear light to anyone who does not realise that the perpetrators of these, to us, inconceivable acts, are sometimes not rampant monsters of wickedness, but among the feeblest and most pitiable of mankind, and that the deterrent effect of *indiscriminately* heavy sentences is, demonstrably, nil. The chief controversy upon this subject has been as to whether flogging should not be administered in the case of men (to boys under sixteen whipping is given). It may safely be said that average manly sentiment—probably also average womanly sentiment—is enthusiastically on the side of flogging for such offences. Parliament was persuaded to take the opposite view by great lawyers, whose robust good sense and rectitude of feeling were alike unquestionable ; but a good many experienced country clergymen now urge that this was a mistake, and the Lord Chief Justice has said the same.

It is probable also that offences of this kind would more often be brought before the Courts of Justice if they were heard with closed doors, and the danger of perjury, which in cases of another kind would be greatly increased by the exclusion of the public, is not necessarily a conclusive objection in this instance.

There is another aspect of the matter, besides the question of penal treatment, which is important. Crimes of this order are probably, in many cases, though by no means in all, associated with feebleness of mind which ought to be dealt with and drastically dealt with as such.

4. The Proposed Raising of the "Age of Consent" from Sixteen to Twenty-one.

This is an old proposal and has been very thoroughly discussed long ago. It may help to illustrate the real

character of the controversy if I again refer to Mr. Hopwood, who strenuously opposed even putting the age so high as sixteen. There are prominent opponents of Woman Suffrage in favour of the proposal, others against it, others in favour of an age between sixteen and twenty-one. There can be no doubt that the same division of opinion would be found to exist among strong supporters of Woman Suffrage.

If I now enter somewhat fully into the arguments against the proposal, to which personally I am opposed, it is chiefly for the sake of making it clear that legislation of this kind should not be lightly adopted, and raises questions on which agitation and the excited views which it engenders are very much out of place.

The question really is at what age a girl or woman shall begin to be regarded as so far the proper guardian of her own honour, or so far capable of propriety or impropriety of behaviour that *some appreciable share of the blame* (*varying according to circumstances*) should *prima facie* attach to her if she should lose her innocency. It is plain that if in the eyes of the law they never reached this position at any age, women would really be placed in an odious position of subjection. It is also plain that the choice of any definite age, though necessary, must be to a certain extent, arbitrary. The age of sixteen was ultimately chosen in this country for reasons which (whether sufficient or not) are fairly obvious*—that the monstrously early age of thirteen once obtained, is due to the survival of rules of law which had their origin in the very

* A lady of experience in work among the poor writes: "Girls born and bred in crowded centres or in labourers' houses are, in consequence of their surroundings and experience of the temptations of life, equal at the age of sixteen to girls of the richer and more protected classes at twenty or twenty-two years of age." On the other hand, a distinguished Statesman (opposed to Woman Suffrage) urges the raising of the age to seventeen.

different circumstances of another race and climate. It is not quite clear why the particular age of twenty-one has been suggested. Probably it is because that is the age at which persons of either sex become free agents in matters of property, responsible for their debts, &c.; but this is surely a misleading analogy—nobody would venture to suggest on the strength of this analogy that young men of twenty should be regarded in law as the irresponsible victims of their own bodily desires.

It is perhaps necessary to explain to some of the advocates of this proposal what their own proposal actually is. It is that if two young people of nineteen or twenty have an illicit love affair, or if an accomplished rascal of the Don Juan type seduces an innocent and amiable girl, or if a young woman of twenty, brought up in vice, allures a thoughtless boy of seventeen, *in all these cases indifferently*, the male sinner is to become and remain liable to conviction of a crime for which the penalty is imprisonment with hard labour not exceeding two years—*in all these cases indifferently*, for no mode of discriminating between them in a court has been, or can be, suggested. Now when the objection is taken to this proposal that it would give rise now and then to monstrous cases of spiteful oppression of the man or boy, and very frequently to ugly cases of blackmail, some people would answer that some risks must anyway be taken, and that they would rather incur these risks than forgo a powerful protection for innocent girlhood. This answer quite overlooks the real point. A penal system which lent itself to injustice would not be a powerful protection, but the reverse. It must be remembered that *in this relation* the worst cases of callous abuse of innocence are not the important cases to consider; the girl most truly injured is the least likely to tell her story in a police court;

the worst villain will generally cover up his tracks. What is principally affected for better or worse by the proceedings of police courts is the social tone and habits *among themselves* of classes (in some districts quite small classes, in others including many of the respectable poor) in which loose relations between young men and young women are comparatively open, sometimes even sanctioned by custom. It is a very real danger that the occurrence of even a few of those cases of injustice (which, as has been pointed out, must certainly occur) would do a great deal to brutalise the sentiment of men towards women, and law would in that case do women an injury far outweighing any protection that it could afford.

The matter is, of course, a good deal altered if, instead of the age of twenty-one, that of eighteen is suggested. I am, however, bound to express my conviction that even in this case there is grave danger in the proposal. This matter hardly concerns the well-to-do classes, in which both young women and the young men with whom they associate live to a comparatively late age under discipline and supervision; but does greatly concern classes in which both temptation and the knowledge which can guard against it come much earlier. As the law stands, nothing is liable to be treated as a crime but what, even upon a lax view of such matters, should be abhorrent. If any considerable change were made, cases must occur which would enlist natural human sympathy (that of women as well as men) against, instead of on, the side of the law.*

B.

This last observation leads to the consideration of an idea which seems to underlie much of the now

* Before quitting this subject I would like to call the attention of law reformers to the subject of a decision in R. *v.* Bennett (4 F. & F. 1,105), on which doubt has been thrown by R. *v.* Clarence (22 Q. B. D., 23).

prevalent talk on these subjects. When we are assured that Woman Suffrage will lead to some very important change in the law, it cannot be (unless, indeed, the assertion is made by very ignorant or very unscrupulous people) that nothing further is intended than a reasonable amendment of the law on its existing lines. And in a great many minds there seems to lurk the thought that eventually the State may be brought to repress illicit intercourse between men and women as in itself criminal (that it is not merely a wrong thing, but a thing which it is well to punish by law).

Now, I am not in the least concerned here to make points against Woman Suffrage. But an agitation, or at least an outbreak of excited talk, has arisen on these matters, which is of greater importance than the Suffrage agitation itself. It is only just to say that many Suffragists will feel as keenly as any Anti-Suffragist that notions are being bandied about which are calculated to take a deep hold upon the imaginations of young people, and which demand to be thought out clearly, because unless they take a strictly reasonable and high-minded shape, they must do great harm.

In the first place, therefore, those who speak on these topics should be challenged to make up their minds whether or no they wish to make illicit intercourse, as such, criminal—(whether punishable in the man or in the woman or in both is a subordinate question). The idea of such repression of vice is as old as Christian civilisation. Long before now, States or communities have tried to put it into force. They have always failed, and, what is more, they have always brought about widespread and sordid depravity. And the reason is simple; unheeding attempts at repression inevitably end by enlisting a great

deal of what is best as well as what is worst in society and human nature upon the side of laxity. The eloquent insistence of J. S. Mill (to cite only one authority) that the State must leave private virtue to fight its own way unaided by the armed force of law is in some respects exaggerated, but in this respect, it conforms with the judgment of the wisest men and women of many generations.

But, while most men and women who have once frankly faced this question will admit that this is true, some of them will still say that the more influential position of women, which (rightly or wrongly) they expect from Woman Suffrage, will bring about a change for the better in existing moral standards. To what change for the better does this flood of loose talk about questions of sex tend? The whole gist of what is now commonly said by Suffragist advocates who deal in this topic is an indignant complaint that current morality allows another standard for men than for women. There is need to say plainly that, while this complaint contains an element of truth, it combines with it a false suggestion which is more easily felt than distinguished, and which must hinder acceptance of the truth. To say that chastity outside the bond of wedlock is a duty for men as well as for women, is to state a plain, if hard, consequence of Christian morality, which we ought to accept without reserve. To say that unchastity in a man or in a woman should be regarded in quite the same way, is simply untrue, since their temptations are wholly unlike. It is no social convention or moral tradition, it is nature which inclines the one to seek what the other is normally inclined to shrink from; and no moral teaching or sentiment is quite honest or quite clean which does not take account of this fact.

This fact is, of course, the origin of much of what is worst in social life. It is quite certainly the origin also of all the charities and sanctities of domestic life, of everything that we value in romance, and poetry, and of all civilisation, except what is most grossly material. Moreover, it is not a fact which can be extirpated from human nature. So long as this is so, there must always be a fallacy in saying that the requirement of chastity is just the same for a man and for a woman. There are some things which are positively noble in a woman, for which a man could claim no credit, since it would be a disgrace for him to be without them; there are some (and this is one) of which the converse is true.

It is not for the present writer to dwell on the harm which elder women do to their daughters by giving them distorted views of this side of life. But nowadays so much of what they say to their daughters is said (in a manner) in the hearing of their sons, and a word ought to be said about its influence on them. Convey to your son in this indirect way (for you would hardly say it directly) that the men with whom he will have to deal, who in any manner or at any time run after women, should be objects of abhorrence or of superior pity to him; tell him that he will find it all his life as easy to keep clean as it is for a nicely brought-up girl; suggest even that, in the life he ought to lead, he has any business to find it quite easy, and you may be sure that he will see through your moralities. The best you can hope is that they will not affect him one way or the other, but that you and he will go on in separate moral worlds. If on the other hand you suggest to him (with the less talk the better) your ideal as something which is and ought to be hard but is not the less worth while, showing him (without special reference to this topic) that resistance to surroundings

and tenderness for the weak are both of them masculine qualities; telling him that all the passion in his nature is not too much to reserve for a single object to which it may one day be consecrated, and that in the meantime, as a great physician puts it, "there are other altars than those of Venus on which a young man may light fires"*—you will be making the sort of appeal which never fails of securing some respect. It would be difficult to do the cause of woman any greater disservice than to put its claim on man in any other form than this.

CHARNWOOD.

* Osler: "Principles and Practice of Medicine."

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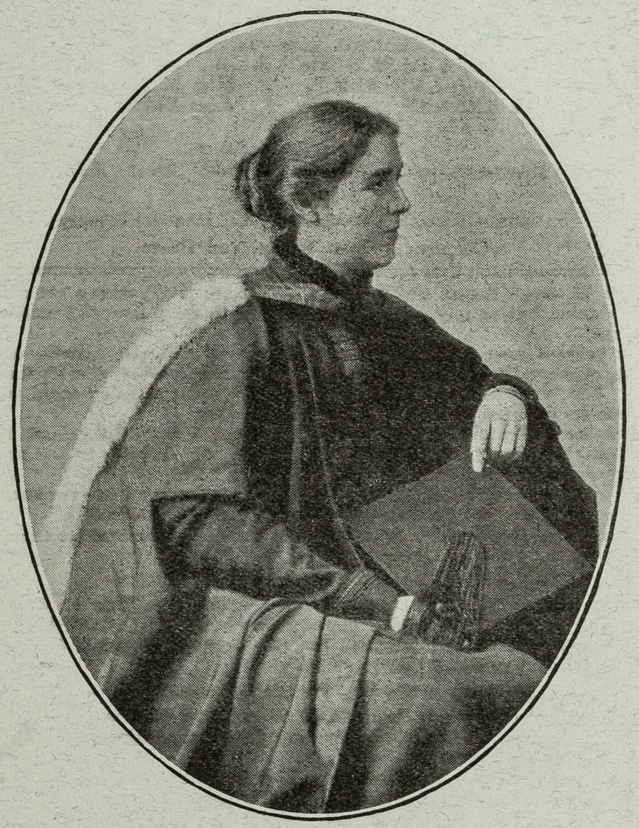
The Struggle for Political Liberty,

BY



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The Women's Social and Political Union are NOT asking for a vote for every woman, but simply that sex shall cease to be a disqualification for the franchise.

At present men who pay rates and taxes, who are owners, occupiers, lodgers, or have the service or university franchise possess the Parliamentary vote. The Women's Social and Political Union claim that women who fulfil the same conditions shall also enjoy the franchise.

It is estimated that when this claim has been conceded, about a million and a quarter of women will possess the vote, in addition to the seven and a half million men who are at present enfranchised.

The Women's Social and Political Union claim that a simple measure, giving the vote to women on these terms, shall be passed immediately.

Constitution.

Objects.—To secure for Women the Parliamentary Vote as it is or may be granted to men; to use the power thus obtained to establish equality of rights and opportunities between the sexes, and to promote the social and industrial well-being of the community.

Methods.—The objects of the Union shall be promoted by—

1. Action entirely independent of all political parties.
2. Opposition to whatever Government is in power until such time as the franchise is granted.
3. Participation in Parliamentary Elections in opposition to the Government candidate and independently of all other candidates.
4. Vigorous agitation upon lines justified by the position of outlawry to which women are at present condemned.
5. The organising of women all over the country to enable them to give adequate expression to their desire for political freedom.
6. Education of public opinion by all the usual methods such as public meetings, demonstrations, debates, distribution of literature, newspaper correspondence, and deputations to public representatives.

Membership.—Women of all shades of political opinion who approve the objects and methods of the Union, and who are prepared to act independently of party, are eligible for membership. It must be clearly understood that no member of the Union shall support the candidate of any political party in Parliamentary elections until Women have obtained the Parliamentary Vote. The entrance fee is One Shilling.

The Struggle for Political Liberty.

By Chrystal Macmillan, M.A., B.Sc.

(A Lecture given on February 16th, 1909, the day of the Opening of Parliament.)

When the history of the twentieth century comes to be written it will be told how its first years witnessed a great revival of interest in and enthusiasm for the fundamental principles of liberty and freedom and justice, an awakening to the fact that, if in theory men hold these things good for all, in practice they are a monopoly of certain privileged classes. This awakening is not confined to one country nor to one race. The Russians, the Turks, the Persians, the Indians have realised that it is not consistent with their dignity as rational and moral beings that they should be compelled to obey laws they have no share in making, or that they should be denied the responsibility of shaping the destinies of their countries. The unrepresented in these countries have risen and demanded recognition, and in a certain measure the authorities have yielded to their just claim. To Russia and Turkey have been granted constitutions, with partial freedom of representation, and to the Indians a larger share in the government of their great country.

But when time has brought us to a point where we shall be able to see the events of to-day in a truer perspective, the struggles and victories of the men of these countries will sink into insignificance beside the struggle for freedom which women are now waging in all the so-called civilised countries of the world. The efforts of these men will but take their places as parallel to similar efforts in which the governed have asserted their right as "the people" against the assumed divine right of those holding hereditary power. The plebeians of Rome fought that they might be represented by Tribunes of their own choosing; the Barons at Runnymede compelled an unwilling king to sign away his hereditary power; the people of England did not let the divine right of Charles I. save him from the scaffold; the clamour of the people forced the landlord House of Commons of 1832 to share its hereditary power with a large unrepresented class.

These struggles have many points of similarity. In all, those

born to the ruling class unwillingly yield to the pressure of the people. They resist always in the belief that they are acting only for the good of the people, and as anxious to save them from responsibility; while the people insist that they best know what is for their own good, and claim the right to share in the responsibility of governing themselves. The governing class bases its hereditary claim on the natural or the divine order of things, and shuts its eyes to the fact that what it takes for a natural order is merely a passing political custom. The people assert that the natural qualification for taking a share in the government is simply that they are the people for whom the Government exists.

Women in their fight have all these difficulties to face; for men, who are the ruling power to-day, are unwilling to share that power with the women of the country. Men resist the claims of the women professedly on the ground that they are acting, not only for the good of the country in general, but for the good of the women themselves, and because they are anxious to save the women from responsibility. The men base their claim on the natural order of things—sometimes even on the divine order—forgetting that their right is merely hereditary and founded on custom, and that what seems to their limited outlook the natural order of things is no more than a political custom of their own time and country.

But over and above, women have to face the further difficulty that they are as yet unrecognised as "the people." Women in all countries are realising this. They are rising, and not only are they organising in their separate countries but they are organising internationally. At the conference in Amsterdam in 1908 twenty-one different countries were represented. Delegates were present from all parts of the world—from the United States and Canada, from South Africa and Australia, from Spain and Russia, from Bohemia and Bulgaria—and from women of all nationalities it was possible to realise how widespread is the agitation and how the suffrage is everywhere considered the fundamental question. Though so many different races and countries were represented, the remarkable fact is that, just as in this country, the Women's Suffrage Societies, whether constitutional or militant, party or non-party, unite in the form of their demand; so all these different countries make the same demand—in the words of their resolution, "to ask for the franchise on the same terms as it is now, or may be, exercised by men," leaving any required extension to be decided by the men and women together. Be the franchise wide or be it limited, it must not exclude women on the ground of sex. In other words, women demand that they should be recognised as "the people."

The Storm Centre.

But if this agitation for the enfranchisement of women is active in every part of the world to-day, there is no question, as the President of the International Alliance said in 1908, that the *storm centre* of the movement is in this country, and that the women of the world are looking to us with hope that our speedy enfranchisement

will do much to encourage the women of other countries to work for the successful issue to their fight. And as the storm centre is in this country, so is this day of the opening of Parliament and of the reading of the King's Speech a reminder that the storm will continue to rage until its cause has been removed by the placing of our Bill upon the Statute Book. For though there is opposed to us *conservatism* and the brute force of the established power, and although our friends the "Antis" even go the length of declaring that the right of the franchise can only be based on the might of the stronger, time is on our side—as it always is on the side of those who have the courage to believe in the ultimate triumph of right *over* might—and time will show that this right principle will triumph and that soon the women of this country will no longer be classed with aliens, criminals, and lunatics, but will enjoy the right of which they have been too long deprived—that of being free citizens of their own country.

To-day, then, is a very special centre of the storm, for the omission of our measure from the King's Speech brings home to us most clearly that we are shut out from the common council of the kingdom—that we have no constitutional means of suggesting the amendment to that Speech which we most need and desire. The most urgently needed and the most urgently demanded reform has not been mentioned—and why? Because those who demand it are not represented. The House of Commons, which should owe its very existence to the consent of the people, presumes to legislate for the people without having asked the consent of one-half of the people.

What is this Parliament? Whence does it derive its power? Is that power exercised as it should be?

Political philosophers tell us that governments are established to carry out the will of the people. In primitive States the government, as a rule, is in the hands of a chosen king, and he selects his own councillors. This is the most elementary form of representative government by the consent of the people.

The United States of America express this representative or democratic principle in these words:

> "We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their *just* powers from the *consent of the governed.*"

Notwithstanding these high-sounding words, the United States, no less than this country, has built up a government in which one-half of the community—the women—are governed without their consent, and are therefore *unjustly denied their* inalienable right of liberty.

If in our own country we have not so explicitly stated these principles in a written constitution, we at least assume them at

every turn. The right to live is definitely recognised. We always *speak* of this as a free country—as a land of liberty. One of our most characteristic national songs insists that "Britons *never* shall be slaves." Whatever may be the practice—in theory at least—it is evidently assumed that we are to take credit to ourselves as living in a free country. The phrase "deriving their just powers from the consent of the governed" is merely expressing what we mean by "liberty" in other words.

That American formula, then, does very well express the point of view of the people of this country. The right of each individual to life, freedom, and happiness, and the joint consent of the governed are the essential points.

Governments are good in so far as they give the fullest life, freedom, and happiness to the governed. They are stable or possible so long as they have the consent of the governed, for no government can last without that consent.

The Great Charter.

The chief landmarks in the history of the development of a constitution are those times at which the governed have ceased to give their consent to the established government, and the result has been either alteration in the form of government or civil war. Such landmarks in the history of our own country are the struggles which led up to the signing of the Great Charter, to the passing of the Bill of Rights, to the Declaration of Independence of the American Colonies, to the passing of the Great Reform Bill of 1832.

It is usual to date the constitutional history of England from the signing of the Great Charter at Runnymede. That Great Charter contained many provisions which are now obsolete, but it also set down the principles of liberty—not quite in the same form as in the American declaration, but the essentials are there. The three main sections of our Great Charter are these: (47) "To none will we sell, to none deny, to none delay right or justice"; and (46) "No freeman shall be taken, or imprisoned, or disseised, or outlawed, or banished, or anyways destroyed; nor will we pass upon him or commit him to prison unless by the legal judgment of his peers, or by the law of the land." This is the provision forbidding arbitrary robbery or imprisonment. The other important section is: (14) "No scutage or aid shall be imposed in our kingdom, unless by the common council of our kingdom, except to redeem our person, and to make our eldest son a knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable aid."

This scutage was the military service due to the king from tenants in chief. I have sometimes seen it stated that women did not give this service. They cannot always have been exempted, for in early times at least both lords and ladies were summoned to meet the king cum equis et armis (mounted and armed) when necessary.

The important point in this paragraph is the provision that no aid—that is tax—shall be levied without the consent of the *common council* of the kingdom. This is an explicit statement that there is to be no taxation without common consent—"no taxation without representation," as the principle is expressed to-day. It also implies the existence of a common council.

This Great Charter did not lay down absolutely *new* principles. The principles in it had been commonly recognised before. King John had set aside these principles. Being in the position of supreme power, he had found it convenient to forget to apply them. He had levied taxes and arbitrarily imprisoned his subjects till they rebelled and compelled him to alter his constitution, or, at least, the principles of government he was putting into practice. At the point of the sword he was forced to sign a written statement of the principles of government under which the people would consent to be governed.

The Bill of Rights.

Another example of such a landmark in the development of our Constitution is the Bill of Rights, in which the old principles were re-written and signed. Charles I. was in the habit of imposing taxes without the consent of the common council, and had asserted his divine right as king to act independently of that common council. John Hampden has become famous in history principally as a passive resister—as an advocate of the principle that taxation involves representation. More than once he refused to pay taxes levied by the king without the consent of Parliament. When I was at school years were spent in instilling into me an admiration for his defence of the principles of liberty. I wonder if such dangerous doctrines are taught the youth of the country to-day. When compulsion was put upon him he appealed to the protection of the law, but the Court decided against him, one of the Judges saying: "I have never read or heard that *lex* was *rex* (the law was king), but it is common and most true that rex is lex (the king is law)." The majority of the Judges gave similar opinions, declaring that the law could not bind the king. The Lord-Lieutenant of Ireland said of him: "I wish Mr. Hampden and others to his likeness were well whipt into their right senses." The tyrant, however, went too far, and he was condemned to die in vindication of the principles of the Constitution.

The two later Stuarts were also inclined to overstep their rights, and it was again found necessary to set down in writing for the signature of the sovereign the fundamental principles of the Constitution.

William and Mary were invited to become king and queen only on condition that they recognised these principles of liberty by signing the Bill of Rights.

That Bill of Rights reiterated the recognised constitutional principles. Its more important sections are:—

(1) That the pretended power of suspending laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

(4) That the levying of money . . . .without grant of Parliament . . . . is illegal.

(5) That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal.

(12) That all grants and promises of fines and forfeiture of particular persons, *before conviction*, are illegal and void.

Section 1 reaffirms the principle that laws can only be enacted and repealed with the consent of the governed; the second (4), that taxes can only be imposed with the consent of the governed. Section 5, referring to the right to petition the king, had always been recognised, and now it is definitely set down. Section 12 again lays down the principle that no one is to be punished before conviction.

As the Great Charter marked the beginning of a more settled time and a better application of the principles of justice, so the Bill of Rights made clear what the rights of a subject are, and since that time no sovereign has made any very serious attempt to override or set aside these rights. The Great Charter had said that there must be a *common* council. The Bill of Rights had set forth that the wishes of that common council can not be arbitrarily set aside, that without its consent no laws can be made and no taxes imposed. In the middle of the eighteenth century, however, the demand for the recognition of constitutional principles began to take a different form. It began to be recognised that the *Commons* as *then* constituted had *ceased* to *represent* the people. They were, in fact, not a *common* council. They represented only a section of the nation. "There is a time when it is clearly demonstrated that men cease to be representatives. That time is now arrived."

A Reasonable Demand.

From that time till to-day those who have taken their stand on the fundamental principles of liberty have put these demands in a new form. They have asked for direct representation in the Common Council, because they recognise this to be the only way in which it is possible to have a *common* council.

To understand the position of the reformers in the eighteenth century and to appreciate how reasonable their demands were I must explain who at that time had this right of the franchise. There were three kinds of franchise for the House of Commons—the county franchise, the burgh franchise, and burgage franchise.

(1) The first franchise to be established was the county franchise, and the first Act making provision for the election of representatives was passed in the seventh year of Henry IV. That Act sets forth that "all they that be present at the County Court . . . . as well suitors duly summoned . . . . as others . . . . shall attend to the election of Knights of the Shire," as the county members are called. The County Court was attended by women as well as by men. We know this because there are records of women receiving special exemptions, and even of being fined for non-attendance. This, then, was the first franchise. It was really adult suffrage, because it was open to anyone to attend the County Court. The same statute provides that the indentures of the members returned "should be under the seals of all them that did chose the Knights." This provision was never carried out in practice—only a few of the more prominent voters present signed the indentures. In the county of York for some years it was the custom for the indentures to be signed, not by the freeholders themselves, but by their agents or attorneys. Certain of these returns were signed by the attorneys of the great ladies as well as of the great lords. In 1411 Lucy, Countess of Kent, signs such an indenture by attorney, and in 1414 Margaret, widow of Sir Henry Vavasour, does the same. In that county, then, there is evidence that the woman's right to vote was recognised.

Women not excluded.

Later the franchise in counties was limited to freeholders with certain qualifications, but women were never expressly excluded. If they did not vote in large numbers, they certainly sometimes did vote. There is in the British Museum a manuscript account of a Suffolk county election at Ipswich. This is how the story runs:

"A short and true relation of the carriage of the election of the Knights for the county of Suffolk at Ipswich, which began there upon Monday morning, October 17th, this present year 1640, and ended upon the Thursday morning then next ensuing.

"The said High Sheriff, having sat out all Wednesday from morning till night without dining, did at last, notwithstanding the violent interruptions of the said Sir Roger Norby"—the poll was going against that gentleman—"and others, finish numbering the votes that day. . . . . 'Tis true that by the ignorance of some of the clerks . . . . the oathes of some single women that were freeholders were taken without the knowledge of the said High Sheriff, who, as soon as he had notice thereof, instantly sent to forbid the same, conceiving it a matter very unworthy of any gentleman and most dishonourable in such an election to make use of their voices, although in law they might have been allowed, nor did the said High Sheriff allow of the said votes upon his numbering of the said poll, but, with the allowance and consent of the said two Knights themselves, discount them and cast them out."

This account shows that women freeholders must have been in the habit of voting. It appeared to them the natural thing. The

Sheriff, knowing the votes to be legal, required to ask the consent of the candidates before he could cast them out.

(2) The towns or burghs were not represented in Parliament so early as the counties. Just as the first councils of freeholders were summoned to Parliament by the king that they might be taxed, so, when the towns began to grow wealthy, certain of them were asked to send representatives to Parliament in order that they, too, might be taxed. The towns appear to have themselves regulated the method of selecting their representatives. In Scotland the practice in all the burghs was uniform. For many years the old Town Council elected the new Council, and the two together appointed the member to represent them in Parliament. In England practically every town made its own rules. Sometimes the electors were the burgesses, who might be women; sometimes the residenters. The ordinances of Worcester enact that the election of members of Parliament shall be "openly in the Guild Hall of such as ben dwelling within the ffranchises of the burgh and by the most voice."

(3) Besides the burgh members returned by towns of considerable size there were members returned by certain small burghs in which there were not more than half-a-dozen electors. In a few cases the lord or lady of the manor as individuals returned the members. There are the two well-known cases of Dame Dorothy Packington and Dame Elizabeth Copley. These ladies, Dame Packington in the reign of Elizabeth and Dame Copley in the reign of Philip and Mary, each returned two members to Parliament for their small boroughs. They were the only voters in their constituencies. These returns are so well authenticated as to be recorded in a Blue Book of the House of Commons, published in 1878. That is a Blue Book which gives a list of members returned from the different constituencies from the earliest times.

There is also preserved in a collection of old letters one referring to Dame Copley's borough of Gatton. It was written in connection with an election in the borough of Gatton at a time when the daughter-in-law of the Dame Copley mentioned above was the only voter. It is written by Queen Elizabeth's Secretary of State, Walsingham, to two gentlemen, asking them to do all in their power to prevent Dame Copley sending her nominees to Parliament. The interesting point is that the Secretary of State did not wish Dame Copley's members returned, and yet it did not strike him that he might question her right to return them. If there had been any doubt of the woman's right, surely when he was so anxious about the return he would have discovered this simple way out of his difficulty. The fact that he did not do so is clear proof that he and the Lords of the Council, on whose behalf he is writing, were convinced of the woman's right.

Up to the time of the passing of the Reform Bill of 1832 the state of representation in the country remained much as I have described it. Broadly speaking, the freeholders voted in the

counties, the burgesses in the towns, and a large number of small decayed burghs, with no more than one or two voters, also returned members. Many large towns, such as Manchester and Birmingham, were quite unrepresented. This was the state of representation, when, in the middle of the eighteenth century, the struggle for constitutional liberty began to take the form of a demand for direct representation—for the right to vote for a member to sit in the common council.

As King John asserted his hereditary right against the wishes of the people, and as King Charles presumed on his position to try to limit the power of the people's assembly, so in the eighteenth century the House of Commons asserted its hereditary right against the wishes of the people, and presumed on its position to deny the right of the people to be represented in the common council.

Champions of the Unrepresented.

In England there was a certain John Wilkes who was one of the champions of the right of the people to be represented in the Commons. He was the editor of a paper called the *North Briton*. Because in that paper he published a condemnation of the King's Speech he was imprisoned (1763). His arrest was illegally carried out. The Secretary of State of the day—no doubt acting on the instigation of the Government—issued on his own authority a warrant for the arrest. No such warrant has since been issued. After his release Wilkes was elected to the House of Commons, but the Commons refused to admit him. Pitt, who early realised that the House of Commons could not dictate to the people, brought in a Bill to declare that the Commons had no power to reject a chosen member; and Wilkes ultimately was accepted. Later, both Pitt and Wilkes brought in unsuccessful measures advocating the reform of the Commons.

In Scotland one of the champions of the unrepresented was Thomas Muir, an advocate, or barrister, at the law courts of Edinburgh. He went about the country preaching reform and founding societies to propagate his ideas. He pointed out the rotten state of many of the small burghs and how the large towns were unrepresented. His demand was for adult suffrage. For this he was (1793) charged with sedition, the sedition being that he advocated a change in the Constitution.

"We do not worship the British Constitution . . . as sent down from Heaven," he said; "but we consider it as human workmanship, which man has made, and man can mend." He pointed out in his eloquent defence that it was no more sedition to ask what he asked than for Pitt to have brought in a Reform Bill. Judges and jury, however, had made up their minds to condemn him, and to their lasting disgrace he was found guilty and sentenced to fourteen years' exportation to Botany Bay. To show how the prejudice of that day coloured the point of view of the Court I quote the following words from the decision of one of the judges: "The landed interest alone has the right to be represented . . . the

rabble has only personal property, and what hold has the nation on them." This was as much as to say that those who were not landed proprietors were outside the Constitution.

In his defence Muir said: "The records of this trial will pass down to posterity, and when our ashes shall be scattered by the winds of heaven the impartial voice of the future will rejudge your verdict." And so it has proved, for there stands to-day on the Calton Hill—that finest site of our beautiful city of Edinburgh—a tall monument—it is called the Martyrs' Monument, for it was erected by the advocates of reform in Scotland, in memory of that Thomas Muir, in recognition of the debt that Scotland and the rest of the country owed to him and his fellow-martyrs. What they asked and were condemned for asking, once granted was considered a great progressive reform. "Let them call it mischief. When it is past and prospered 'twill be virtue." It was so then, and it will be so again.

It was not till twenty years later, however, that the question came to be recognised as one of practical politics. It is difficult at this distance of time, and with our more developed ideas of the rights of all classes, to realise that the representative system of that day found politicians to defend it when such towns as Manchester and Birmingham were unrepresented, and when Old Sarum, a ruined hamlet, returned a member. The arguments of prejudice were the same then as they are to-day. So late as 1820 the Prime Minister—Liverpool—wrote: "The grant of representation to the large boroughs would be the greatest evil conferred on those towns. It would subject the population to a perpetual factious canvass, which would divert more or less the people from their industrious habits, and keep alive a permanent spirit of turbulence and disaffection among them." Have these words not a familiar ring to-day? The difference is that to-day they are used against women, custom having made the franchise for men appear a wholesome and useful institution.

Ten years later, on the eve of the actual passing of the great measure, the Duke of Wellington, one of the most strenuous opponents of parliamentary reform, was so blind to the signs of the times that he said in the House of Commons: "I have never read or heard of any measure up to the present moment which could in any degree satisfy my mind that the state of the representation could be improved or rendered more satisfactory than at the present moment. I would go further and say that if at the present moment I had imposed upon me the duty of framing a legislature for any country, and particularly for a country like this, in possession of great property of various descriptions, I do not mean to assert that I could form such a legislature as we now possess, for the nature of man is incapable of reaching such excellence at once; but my great endeavour would be to form some description of legislature which would produce the same results." The Duke was of the contented mind. He was evidently satisfied that he had found what we are all looking for or seeking to establish—that best of all

possible worlds. He did not realise that this speech proved his incapacity as a leader. When he sat down, his neighbour whispered to him: "You have announced the fall of your Government."

The Reform Bill of 1832.

From the beginning of the nineteenth century the agitation steadily grew, and in the twenties it was universal. After the Reform Bill had been twice introduced in 1831, and thrown out once by the Commons and once by the Lords, the consequences are thus described: "At Birmingham the bells were muffled and tolled. The mob at Derby broke into open riot. The gaol at Nottingham was burnt down. Two troops of Kentish Yeomanry tendered their resignations because their commanding officers had voted against the Bill; and meetings were held in almost every county to support the Government."

Among the opponents of the measure was a certain Wetherall. It was necessary for him to attend the Assizes at Bristol. When he entered the town he required to have his carriage guarded by 300 or 400 mounted gentlemen. He was received with hisses and yells, and stones were thrown at him. When the business of the Court should have been taken, there was such an uproar that the Court had to be adjourned. In the riot which followed the Mansion House was attacked and a great deal of damage done. The Bishops' Palace and part of the town were burnt. One man was killed, and several were wounded. Wetherall himself had to flee the town.

With the usual want of imagination and failure to recognise the possibilities of the procedure of the House, it seemed as if the Government were about to let the Bill drop after its rejection by the Lords. A feeble attempt in the Commons was made to propose a resolution lamenting the fate of the Bill. As was natural, the resolution met with opposition, and would have dropped had not Macaulay pointed out the only straight path to honest men in a speech which made it possible to reintroduce the Bill. "At the present moment," he said, "I can see only one question in the State—the question of reform; only two parties—the friends of the Bill and its enemies. The public enthusiasm is undiminished. Old Sarum has grown no bigger; Manchester has grown no smaller. I know only two ways in which societies can be governed—by public opinion and by the sword."

When the Bill was next introduced it passed the Commons by a large majority, but there was still the difficulty of the Lords. The Commons, however, had had enough of the disturbances in the country; they were determined to have the Bill carried, and to make this certain they threatened to create sufficient new Peers to make a favourable majority in the Lords. The Bill was then carried, and the long struggle ended. That Bill disfranchised the rotten burghs and gave representation to the large towns. Its general effect was to enfranchise the middle class, but it was not till 1867 that the working man was granted voting rights, and that, too, only

after a long fight to have his claims recognised. The same arguments were used against him which were used against the giving the right to the £10 householder. This right, too, was carried by an unwilling House of Commons, and only in response to agitation in the country.

With each extension of the franchise the House of Commons has approached more nearly a common council. Each extension has been brought about because the governed had ceased to give their consent to the particular form of government under which they were compelled to live. Women now universally recognise that it is not in accordance with their dignity as rational beings that they should live under laws in the making of which they have no share, or that they should be denied the responsibility of shaping the greater destinies of their country. A few women have always realised this, but it was not till the middle of last century that the feeling became widespread in this country and in America.

Women Unrecognised as "the People."

But the special difficulty with which women have to contend is that they are still unrecognised as the people. Their interests are not considered to rank as of equal importance with men's. They are only considered of value in so far as they promote the interests of men. We all know the sentimentalist who sums up this point of view by saying that woman is the helpmeet of man, using helpmeet in a narrow sense of servant to carry out the wishes of the master. This is an unworthy view, for woman is not the helpmeet of man if she allows him to remain in that state of mental blindness in which he fails to recognise that he also is bound to be the helpmeet of woman, and that the good of the country is best promoted when she, too, is considered of value, and when her interests are not made subservient to his, but when the capacities of both are allowed to be developed.

This fallacy of denying that a woman is of value in herself is the assumed major premise of much of the writing and much of the legislation of all time, and of not a few judicial decisions in the law courts of our own country.

I take as typical examples of statements which assume this fallacy a few of the recent utterances of Mr. Asquith in his speech on the constitution of the House of Lords. I choose him because, as Prime Minister, he may be taken as representing—I do not say the people—but the governing class, that is the voter of to-day. He forgot the women of South Africa and that they are not free when he said that Briton and Boer have been brought together to co-operate side by side in the working out of a "free responsible self-government." He forgot that if the members of the House of Lords when they carry their hereditary votes into the lobby of their House "represent nothing and nobody but themselves," women are as much overlooked when the hereditary male voter goes to the ballot box representing nothing and nobody but *himself*

The vote of the man is as hereditary as that of the Peer. Both acquire their right to vote by an accident of birth.

He forgot that if the exercise of the veto of the House of Lords "would surely to all who love liberty and believe in democracy be a call to arms, no less is the House of Commons' veto of the Woman's Suffrage Bill last session, and the Government's omission of our measure from the King's Speech to-day, a call to arms to the liberty-loving women of the country.

The fallacy appears at every turn—women are only recognised as citizens in certain connections. It is left to the discretion of the casual administrator to say when the Great Charters of the liberties of the people are to apply to the whole people, and when they are to be limited to one section—to men. Now, this is a point of very great importance. I think it is failure to recognise this which makes for so much of the injustice under which women suffer. I do not say that this injustice is due to men only. We, too, are to blame for not having seen it, and still more are we to blame if we *do* see it and do not point it out.

To go back to our Great Charter, and the principles which are there supposed to be laid down for all. In many ways women have not profitted by it. It lays down that taxes are only to be imposed with the consent of the common council of the realm. Women are not represented on that common council, and yet it professes to be a common council. To call it a common council is to deny that women are part of the nation, and this is exactly what is done over and over again.

Again, we are told that no one is to be imprisoned except by the trial of his peers, and it is often stated that this is the law of the country to-day. To make this statement is again to deny that women are part of the nation, for they are never tried by their peers. But they are sometimes even denied the right to a trial. It is only a few years since an attempt was made to secure the decision of a law court that a man has the right to imprison his wife. The attempt was partly successful, although ultimately the House of Lords decided in favour of the woman's right to her own person. The case is known as the Clitheroe case. A man had locked up his wife for refusing to obey him. Her friends applied to the Court to have her released. The lower Courts decided that the man had the right to the person of his wife, and that he might compel her to live with him. This decision was directly opposed to the clause in the Great Charter making arbitrary imprisonment illegal. The Judges simply overlooked the fact that the principle applies to women as well as to men. Fortunately for that woman and for all women she had wealthy friends, and they were able to appeal to the highest Court—the House of Lords—and the Lord Chancellor had the courage to set aside the masculine personal equation, and to declare that there never had been in this country any such law or custom, and that the woman had the right to her liberty. But in every connection it is serious for women that the

law between men and women should be administered only by men, for there are no prejudices so deepseated as those which deny to women the right to equality of treatment either by custom or before the law. You remember the case of Chorlton *v.* Lings. That was the case in which a woman claimed the right to be placed on the parliamentary voting register after the Reform Bill of 1867 under the clause conferring a new franchise. The new franchise was conferred on "every man not subject to any legal incapacity." I am not going to discuss the argument then brought forward with reference to the legal incapacity, but am going to illustrate my point by the argument on the word "man." At the time of the passing of this Act there was on the Statute Book an Act called Lord Brougham's Act, which provided that in all future Acts "words importing the masculine gender should be taken and deemed to include females except where the contrary, as to gender, is expressly provided." To the lay mind the provision in this Act seems quite clear, and yet what do we find in practice? The Act is calmly set aside. This is how they proceed. Justice Willes says: "It is not easy to conceive that the framer of the Act, when he used the word 'expressly,' meant to suggest that what is necessarily or properly implied by language is not expressed by such language." One of the other Judges, in his effort to interpret the expression in accordance with his preconceived ideas, tried to point out that the Legislature could not really have meant what it said. All it could have meant was, "where the contrary intention does not appear." To the unbiassed mind "expressly," if it means anything at all, does not mean " properly implied," but the reverse, and it certainly means a great deal more than the contrary intention appearing. I am not impugning the whole judgment, but only pointing out to what absurdities prejudice will lead otherwise sensible men.

In that decision the Judges simply talked away a perfectly definite law. It was not to be made to apply because it was to be applied to a woman and—so runs the assumption—laws are not to be administered equally between men and women. That is the root of the whole matter.

The Scottish Graduates' Case.

Then take the decision in the graduates' case, that "women" are not "persons." Here, again, we have the purely arbitrary setting aside of the obvious interpretation of the law. The interpretation given by the House of Lords in that case when applied to the statutes in question produces contradictions and absurdities in these statutes. It was denied that the meaning of the statutes is to be inferred from them as they stand. And why? Because the privilege is so exceptional, because it is fundamental constitutional law and a principle of the Constitution that women do not vote—a principle!

The highest Court of the country has decided that courts of law may at their discretion draw an arbitrary line saying so much we may infer from the statutes but no more; that is to say statutes are to be taken as meaning what they say only up to a certain arbitrary point. It cannot be inferred that an exceptional privilege has been granted to a woman.

We need to-day, as men did 700 years ago, a Great Charter setting forth the rights of women.

In that Charter it must be laid down—

That women, as well as men, are the people.

That privileges shall not be denied to women simply because they are great.

That women shall not be taxed without their consent.

That a Government shall be established in this country deriving its just powers from the consent of the governed, both men and women.

That such a Government can only be established by giving Votes to Women.

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Under His Roof

BY

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UNDER HIS ROOF

THE two women had never supposed they would meet again. They had not only that bitter quarrel like a drawn sword between them. They had a memory of baseness each had evoked in each—a memory which neither was base enough to be able to recall without wincing.

September had come round again. The thing had happened in September. The memory of it came alive each year, borne on that influence—less depressant than stimulus—the high fine melancholy of the first days of Autumn.

The old pain, overlaid by so much happiness, thrust its pale face above the surface of existence, much as the autumn crocus surprised one in some forgotten corner of the smooth immaculate lawn. The long-ended conflict had not for years been so fresh in Esther Bonham's mind as in this hour. Her own victory. Miranda's defeat.

She stood in the after-sunset light, herself and the long white room steeped in the changing radiance. As she put last touches to a bowl of flowers, her inveterate romanticism saw herself as fulfilling the terms of a gracious picture. In her creamy country clothes, shining in that transient brightness, she looked for the moment almost as young as when she had come to Shipbroads, a bride, ten years before.

But Miranda—

She kept glancing through the window towards the drive, as she gathered up the petals of the late-flowering roses—so exquisite and with so little vigour of bloom. They droop, they drop in an hour. They fall at a touch. At this last moment, when the guest was due, Esther had found ravages she must repair. There must be nothing that was not perfect about this perfect house, the first time Miranda should sleep under Shipbroads' roof. For Miranda must be made to stay. Esther had made up her mind about that, as she bent over the roses, warmed, like them, by a belated generosity.

She contrasted her fate with Miranda's. Miranda for twelve years had always, at every crisis, "got the worst of it." Life had bruised and battered her and flung her aside. She had failed everywhere. Her very advantages had helped in her undoing. She had been too pretty and too well-loved at home to be allowed to go away and paint. At twenty-four she had lost the father who adored her. Upon Sir James's death his daughter had dropped

from a brilliant luxurious life to one of petty poverty. Almost in the same hour she had heard that Esther was engaged to the man both women loved.

Miranda was thirty-six now. No older after all than the mistress of Shipbroads herself, who had her days of looking twenty-five. But to be thirty-six, in the country, is to be young still. To be thirty-six in London, in ill-health and low spirits, is to be middle-aged.

Miranda had never been strong—not even in her shielded youth. These twelve years since the quarrel, no wonder they had left her what her cousin's letter said: "a frail ghost of a woman battling with a mortal malady." What need for her to go out of her way to seek another enemy in the rough places of the world? Above all why, now that her half-brother had died, and she was a woman of means, why should she (as the unnerving rumour whispered) be planning to throw away her last chance of happiness! Perhaps throw away her life.

How Miranda's desperate resolution had been reached, Esther could see clearer on this golden and scented evening. Miranda had no such haven as Shipbroads, A woman of fastidious tastes needed a proper setting, Few could hope for a Shipbroads. But half-a-mile across the meadow was a more ambitious, if less romantic house, with terraced gardens. Life in the country!—oh, Esther had her scheme for the rescue of that old enemy, old friend, from the horror that hung over her.

She walked up and down the room. How strange that they should meet here. Here where he had lived. Where he had read and written. Where he had smoked in front of winter fires. Where he had praised the roses for the last time two summers ago; where, so calmly, one evening he had died. His chair. She bent over it. The place had always been full of him. But never since his going had the sense of his presence been so insistent as it was to-night. To this house of his that he had loved as though it had been alive and human, under this roof where Miranda had hoped to live beside him, she was coming on what was like to be the last night she would need a roof, or any human friending.

Unless Esther's plan should succeed.

It must succeed. Esther had written her: "I have a great wish to see you. Could you bear to come?" And Miranda had written back: "I will come gladly. All that old misery was long, long ago burnt out of me and even the ashes scattered."

That was the kind of thing a person of any pride would say. The encounter would not be easy for either of them. Better to go out and meet her at the gate. Esther had noticed, in the way of the sensitive, how, in the open, passions are calmed and manners simpler. As pettiness attitudinises and ill-will thrives indoors, so embarrassments fall away in fields and gardens. That old quarrel between the two women had about it something large and elemental.

Its very ghost would walk with a less furtive mien with only the roof of heaven above.

The barking of dogs. There she was!—coming across the meadow. So she had sent the carriage away. She was stopping now to speak to the dogs. Esther's first thought—she keeps her little school-girl figure. She's not altered as I expected—turned, on coming nearer, to: She's changed beyond anything I ever dreamed. This pale slip of a woman had never walked with so sure a step in the days of her cherished youth. The edge of Esther's sympathy dulled before that advance. The look in the face, too. Was that brightness a blind? Or an effect of sheer excitement in view of the double ordeal?—finding herself at Hugh's gate at last, and remembering—to-morrow.

Yet there was nothing fevered in the small face. The pointed chin lifted a little. Quiet eyes on the steep-pitched roof—the famous roof of slabs of Horsham stone. Where it wasn't mossed and lichen-grown it showed grey, and rippled like sea sand, salt-encrusted.

"What a roof! I never saw roof like that," she said—just like any other visitor, seeing for the first time the great feature of the house.

That they met so without embarrassment—that was yet another kindness Esther owed those sheltering stones.

"You lie so hidden in your hollow, the wonder is I found you."

"Yes," Esther answered, "coming across the fields one sees nothing but the roof."

And Miranda agreed: "It seems to sit on the ground like a group of grey stone tents." She stood there looking up. "The roof was too massive for the walls," she said (tact had never been poor Miranda's forte). "It dwarfs the house."

Was she trying to show Esther that she had no more envy of all that was implied in the privilege of calling that roof one's own?

In any case, a blessed refuge in the difficult first moments, this idle talk on some safe theme. And what so safe as Shipbroads' roof! It was the very type and sign of safety. No such roof, Miranda was told, could cover any house less than centuries old. There were no more such slabs of glorious rippled stone. And even if more were found, no builder of these days could lavish oak on the Shipbroads' scale, to bear the tons on tons' weight of a roof like this. Miranda need only look at the older wing where the timbers showed—framing panels of weathered brick—and the great corner joists, grooved and gullied by action of frost and sun, yet more enduring than iron, which would rust; tougher than steel which might corrode; outlasting stone which scaled and crumbled. The two walked round the house. Did Miranda see the roses and the cypresses? She said "yes" and "yes," but her eyes seemed intent on some other, far-off beauty. Esther stopped her by the

outer wall of the stone ingle that bore on its shoulders the tall chimney. Everyone admired that chimney. Miranda's face was lifted too, obedient, absent. She seemed to feel something was expected of her. Her eyes explored the fissure that zig-zagged like a streak of harmless lightning down the pink and orange of lichened brick :—"Is that crack old?" she asked inconsequently.

"Yes," Esther answered, "very old. This part is Elizabethan," she said with pride.

In some curious way an Elizabethan chimney seemed suddenly a less satisfying thing. On the hostess fell that old sense of vague, undefined disadvantage that she had so often felt in Miranda's presence. Miranda who had lost at every point. Miranda who was so broken and spent that she was ready to fling away what was left of life.

How calm she was. No one who didn't know would ever suspect.

She was made to notice the depth of the eaves. The walls were really higher than they looked—

Miranda shook her head in the old wilful way. "Your roof makes one think of a little man swaggering in a big man's hat. It comes down over his ears. It fairly extinguishes him."

"It doesn't extinguish Shipbroads!" Esther said. "Come in and see." It was less an invitation than a challenge.

They went through stone passages white-walled, and crossed by oak beams, proudly bared now—"all plastered over, when—" on the brink of utterance of that name Esther stopped herself, like a runner checked at the edge of a cliff.

"When Hugh first came?" Miranda said. "Yes, I remember hearing that."

That the nervousness and shrinking seemed to be all Esther's, did not quiet her nerves. The first rush of protecting gentleness that had gone out in welcome to her guest, moment by moment it gave way to the old gêne and sense of rivalry. Never otherwise could Esther have yielded to the temptation to vaunt her prize. Shipbroads—outward and visible sign of that old conquest. Surely Miranda must see for herself the greater beauties. Esther could affect a certain lightness : "This is Red Riding Hood's door. Pull the bobbin and the latch flies up."

But as Miranda went from room to room she gave no sign of fastening hungrily on the quaintness and the beauty that one might think (considering all) would mean more to her than to any other. The unseeing brightness of her eyes seemed to rest on these things without reporting them to her brain. Still she followed her guide with tranquil, unmoved face. Wait till they should reach that upper chamber—but not yet. That should come last when the light was greyer. When they couldn't see each other's eyes too clearly.

Up and down, from room to room, on different levels. In a dim passage Miranda tripped at an inequality.

"Oh, I ought to have warned you. These floors are full of pitfalls." Esther said it, fatuously, as in contempt for the spirit level and the stranger foot.

"How quickly the light goes here," the visitor said.

She was told, "It is always dark up here long before it's dark down stairs. The overhanging eaves shut out the light."

When they came to what Esther called the Captain's Cabin, they stood in dusk under the heavy transverse beam of a raftered ceiling, dark with age. A maid went by with candles. Esther took one, saying some people were so barbaric as to tell her she ought to put in electric light. "Imagine electric light at Shipbroads!" She lifted the candle high. "You see that wainscot with the little panelled door and the linen pattern above. Well," a thrill came into her voice, "I've found out something lately about all this oak—"

Miranda wasn't listening. She stood, half turned away, staring down at the corner. "What's this?" she said.

A heap of something brown flung against the corner joist that came up from the foundation, through the floor, and through the ceiling to the roof. The dark-coloured hillock showed on the white matting with that something unpleasant in any unverified thing that gets into a well-kept house. Was it merely earth? and if so how had it come there? Something the dogs had brought indoors? Esther sniffed the air, arriving at no better knowledge,

"Dust," Miranda said. Then leaning down: "It's like a heap of grated chocolate." She put out her hand.

"Don't touch it!" Esther drew her away. "I'll send a servant." Hastily she opened the next door. "You haven't been in here yet."

The light of the single candle seemed lost in this room, A ceiling as high as that in the Captain's Cabin was low—and showing an open-timbered roof.

An effect of amplitude and peace.

They stood there saying nothing.

In the silence, a little noise—like a fairy saw.

"This used to be the lowest room in the house."

"I remember," Miranda said, as though she had lived here in old days. In a sense she had.

Esther remembered too : Miranda convalescent in a long chair on the lawn at Ardingly Manor. Her girl friend beside her. Not obtrusively more devoted after Hugh's appearance on the scene, yet showing an uncanny skill in hitting on the times when he was there—a casual-seeming, unfailing presence. The silent duel between the two girls. Hugh, all-unconscious—absorbed in Miranda. His nearest approach to realizing the pretty friend from the Rectory had been that day he invoked Esther's aid to get Sir James away—to help the lover to an hour alone with Miranda.

Esther's anguish of acquiescence. The return to those two radiant ones.

That was the first day Esther heard of Shipbroads—all its merits summed in being the house Miranda would love. Hugh beside her. His bright head bent over her drawing book. "This is the gate . . . You come up the path. This is how it looks." He exaggerated the roof. Yet Miranda never found a fault in it then. He made diagrams of each floor. No room but Miranda knew. They discussed changes, for the most part reversions to an older order, as in this room where two windows had been bricked up from the times of the window tax. He had opened them east and south. And still he was afraid—Miranda had been so spoilt. "Spoilt?" Yes by sleeping in the garden. She had got the better of her illness so. Her room at Shipbroads might seem too low for eyes that had looked all Summer on the stars. But in every other way that room was the room, he said, for Miranda's dreams.

Then the day he cut across the fields and came running up the garden. Esther could see that look of his shining still—his hat in his hand, his head held high. The tall figure borne along with a resilient lightness, more boy than man, in the moment of action and of gladness at nearing the goal. The goal, a smiling welcome in the sun—smiling at the vigorous on-coming beauty that was hers—smiling, till she caught Esther's eye. Esther drew her breath against that edge of pain again—the agony of self-betrayal. She had not suffered herself to leave them instantly. Too much like being shown the door, and meekly going. She had stayed while Hugh, flushed, bright-eyed, triumphed over the low ceiling. More space above it than in the room below! "I'm having the whole blessed thing out!" Through a trap-door he had climbed into the attic. The dust of ages. "Cobwebs in festoons like Spanish moss. A roof magnificently timbered. I am throwing all that upper space into your room, Miranda." His laughing parody of the builder: "'Couldn't be done, sir! The tons on tons weight of stone couldn't be sustained, sir, if those cross timbers, flooring the attic, sir, were lifted.'" Modern builders, men of no imagination. Hugh dismissed them gleefully. "They don't know how solidly the old fellow's built." More diagrams. "Like this at present." When Miranda came she would find it so, and so. Oh very clearly Miranda had seen this room with her mind's eye, and known it for the Bridal chamber. So it had been. For another bride.

"What is that?" Miranda asked.

"What?"

"That sound."

"I don't hear anything. Some people don't like this room," Esther went on. "They'd as soon sleep in a College Hall, they say. *I* don't mind it." So she masked a pride of possession scarcely decent. But great as the space was, those presences

filled it . . . they were crowding Esther out. Again that sense of having to assert herself against Miranda. The need seized her to emphasize her place here; to show that she had set her mark on this particular room.

"I've improved it, I think, just lately." She lifted the candle to the central beam. "You see those two deep notches? And here, at the end, the auger-holes and mortices? They tell a wonderful story." Esther's sailor brother had read these marks as though they had been chapters out of one of his naval histories. "This oak has been in strange places! It's gone about the world, ploughing its way throught salt water. It's been warped in hotter suns than any England knows. That long split—perhaps that came of charging into icebergs in the dark. It has seen the great storms. Perhaps battles too. That stain . . . who knows . . .? It's all *old ship's wood.*"

Miranda's eyes shone. "So far inland?"

"Far enough now. But not so far in old days. The estuary of our little river was a navigable channel once. The Roman galleys used to come as far up as the Castle." Esther pointed to the central support. "That battered old king post may have gone out to meet the Armada! And then one of these modern builders comes and overlays all that history with his pettifogging blocks and braces!"

Every one of those queer-shaped holes had been filled in when Esther came here—"filled with new oak stained dark to match the old." An outrage. Worse than a Russian censor's blacking out the finest pages of a contraband book.

"There it is again!" Miranda said. They listened.

"Oh, you mean the rats. I'm so used to them I don't hear them any more. The builder who raised the ceiling stuck in a great new beam—a smooth machine-made thing—the whole length of the room under that old cross-beam. An intolerable eyesore. It couldn't help being so staring new, poor thing! You can't get hand-hewn oak any more. But the new beam wasn't even chamfered. Edges sharp as a hatchet. I had it out two years ago. No pompous big-wig builders meddling. Our little local people got that, and all the other new bits, out. The relief when they'd finished."

A faint filing filled the pause.

"Your 'little people' don't seem quite to have finished yet."

"You mean—the rats?" She laughed. "In all old houses—." Her eyes swept her handiwork. "Not an inch of oak in the place now less than centuries old."

"Wrecked ships!" Miranda said.

"Ships come home." Characteristically Esther evaded the grimmer implication.

"Ships are not like men and women," persisted the other. "A ship that's sea-worthy goes again to sea."

She was jealous ! She must pick flaws ! "Experts say : 'A perfect piece of old England !'"

They had stood for that instant in a silence unbroken by any human accent. But sound there was. Slight, surreptitious. The mean scratching and gnawing of vermin. The mistress of Shipbroads blew the final blast of triumph. "There's not a false note in the whole house now."

Again that slow insistent grate, grate—gnawing, filing. Following hard on the woman's boast, there was a hint of obscure insult in the small insolence of vermin. Their very pettiness penetrated Esther's inflated satisfaction like a pointed tooth. She dropped her eyes to the little schoolgirl figure going to and fro under the banded shadow. A wave of pity broke over Esther. Poor storm-tossed Miranda—facing that tornado in Parliament Square to-morrow. No. No. On a flood of shame at her own meanness, Esther was lifted out of "the shallows and the miseries" of rivalry. She set the candle down and drew Miranda to the window. They looked out at the tall cypress spreading voluminous Victorian skirts, untarnished by the autumn. Yet all the air was full of the scent of fallen leaves. Pungent, tonic, penetrating—the quintessence of the Fall came flooding through the window.

Miranda breathed it in. "How good !" she said. She leaned out till she caught the glitter of silver. The moon had risen as high as the upper reaches of the cypress—caught there like a crescent in a woman's loosened hair.

Miranda called to mind "that dear inconsequent saying of Mrs. Browning's, "The best place in the house is the leaning out of the window." "Not but what the house is beautiful," she said, quick to recall a possible slight. "Beautiful beyond saying."

"You feel that ?" Esther asked eagerly.

"I feel it is part of the fields, and part of the woods. That shows it's a nice house," she answered in her unemotional way.

They leaned together over the low sill.

"Miranda, I didn't ask you to come for nothing. I wanted you to see and feel this beauty. I wanted so much to show you how good it is to live away from cities, in a house you can love. It's such a waste of the beauty there is in the world, for people like you not to . . . not to cherish it. One mustn't wait till one is too old. A house has to grow as well as a garden. Three hundred years weren't enough here. I was ten years making it fit"—(she saved herself from "us")—"making it fit me. And, Miranda, I've found a house for you !"

"For me !" A house would seem to be as little needed by this creature as a cavern or a mountain peak.

"Yes, I want you to stay to-night, and let me drive you there to-morrow."

"I mustn't do that," she said.

"Why not ?"

"I have to be in London to-morrow."

Esther couldn't face the issue yet. She talked on, with a feverish enthusiasm, about the possibilities of this other old house she'd found, about the need of every woman for a house of her own. Without it, a woman was like a picture without a frame—without a wall to hang upon. She sang the joy of gardens. The need to make some corner of earth smile—to make some spot perfect before you die.

"That's my ambition, too," said the other. "Only I am less modest than you. I want, not only here and there a corner. I want all the beautiful earth to smile."

'We can't re-make the world."

"We must. We can." In the pause again, with pygmy saw and file—that ghostly carpentering. Miranda turned to listen. Then suddenly, "Let us go back, into the room where that strange stuff lies in the corner."

"Why? We . . . don't know what it is——."

"That's a reason for finding out," Miranda laughed. "I believe you're afraid of it."

Of course Esther wasn't afraid. "Only it looks—horrid."

They took the candle in. Miranda stooped, thrust down her hand and the sifted stuff rained out between her fingers. "I thought so. It's sawdust. Your 'little local people' have gnawed a new passage."

"But all that ! Where in the world does it come from ?" While they looked the dressing-bell rang.

The slight chill in the air since sunset was not enough to account for the wood fire burning in the ingle of the dining-room, Esther acknowledged that as they sat down. "Pure vanity," she said, smiling. "The old fireplace looks so nice lit up."

The rather silent meal was nearly finished, and Esther had told the servant he might go. The door closed behind him, and the two women looked down a little self-consciously into their plates. Suddenly they were facing each other with wide scared eyes. A report had rung out like a gun-shot in a cavern. Then, among the troop of secondary concussions—plunging, colliding echoes—came a full-throated roar out of the great chimney. The thunder of it seemed to make its progress down a stair, rattling, crashing, uttering fresh explosions, step by step, till it met the final shock of impact with the earth. Not to end there. It wrestled as with an enemy. It escaped. It burrowed—running along under the house. It kept muttering a subterranean anger down there. Over the ingle end of the room had fallen a rain of broken brick, pieces of mortar, dust and soot and grit. Where the sparks of a fire had risen, the evening air was blowing in. The back of the ingle showed a mouth of blackness gaping on the night.

The old chimney had fallen.

. . . . . .

Outside, dogs were barking and servants were running about unmindful of usual duties, usual deferences. Men shouted excitedly as they came running up from the stables with a lantern and a carriage lamp. The moonlight showed clearly enough the amorphous ruin of what had stood and served so long. But the sight of the wrecked chimney had no such power to set nerves jangling as the long thunder of the fall.

The effect of some sharp physical jar is often to shatter hesitations, and to break through barriers that seemed built to outface death. Through the fierce cudgelling of the senses, instead of shrinking and submission, comes a strange and alien freedom. Locked doors open silently, and for one memorable hour the most trammelled soul stands free.

As the two stood there they took hands. Who made the motion first, neither knew. They leaned close. They talked in whispers.

"Come away," Miranda said. "Nothing can be done until to-morrow."

To-morrow! The word made a breach in Esther's thought wider than the gaping blackness that had been the Ingle Nook.

"Miranda, I've *heard*."

"Heard—?"

"What you want to do to-morrow. Listen," she crushed the thin hand. "I've waked each morning since I knew, with a sense of disaster. What I've thought—what is it, dreadful, that's hanging over me? Then, when I was fully awake, I knew. You—*won't* do it. You'll stay here to-night and to-morrow."

"No," Miranda said, "I have to go."

Esther caught her breath in a sob. "Your father—you used to care for your father. What would he have thought?"

"I hope he would have understood."

"You *know* he would have gone mad at the idea. He would have done anything rather than see you. . . He would have shut you up—Miranda, he would rather have seen you dead."

"In many a war families have been divided."

"War! A sickening struggle in the streets. You pushed and dragged. Bruised, flung about. Oh, I've read about these raids."

"And you haven't minded before? You've sat here safe and happy?"

"What could I do? What can *you* do?" Esther held the thin hand tighter. "A little slight creature, a wind would blow away."

She used to be delicate, she admitted. Not now. That was one of the many miracles. The new need for strength had cured her of her ills.

"Has it cured *all* the old pain?" the other woman cried. "Has it cured remembering?"

"Cured or set aside," Miranda answered. "I have better

things to think of now." Then she told what. How the Vision Splendid (a world lifted out of the mire of ages) had shone through all the gloom and mists, and saved her from despair.

A beautiful dream! Esther could understand that. But the hideous reality! "Oh, I've been hearing—in these sickening encounters more than one, you know it's true, more than one has been horribly injured. *Kicked*—."

"Two women have died," Miranda said.

"And for what!" the other burst out. "If it's coming, this change—it will come."

"Do you know why it will come? Because those two were ready to show the way. And because others are ready to follow."

"Not you—not you! Oh my dear, I think of you when you were little." Esther was crying. "All that care and worship. To end like this. You. You of all women on the earth." When, before, she had spoken of Sir James, her heart kept saying Hugh. And now her tongue was shaping the name that had divided them. "Hugh," she whispered, "what would Hugh have said?"

Miranda put out her hand to ward the question off. And then: "He was the most chivalrous man I ever knew." She seemed to think the question answered.

The other drew a quick breath. "Miranda, it seems you've got to know."

Something in Esther's face made the other woman drop her eyes. "Believe me—it doesn't matter. Not now."

"Oh, that shows!"

"Hush! It's all done with."

"Only because it hurt you beyond bearing."

"No. Because I see life is a finer thing than anyone ever told me."

"That's the sort of empty generality people fly to when the particular good has failed them. I never thought I'd find myself telling you. But I *can't* let you go through with this ghastly plan of yours. Her voice went down. "You won't dare to take into that kind of struggle the woman Hugh loved."

Again that motion setting aside, soothing.

"Oh, you've got to know. He never cared for me as he cared for you. That was my punishment. For not playing fair. I made him think—Oh, Miranda. I lied and lied and lied."

The small figure shrank for the first time. "*My* hands weren't clean either. I don't like remembering how badly we behaved to each other.'

"We must remember this once."

"Why? After all women used to think all was fair in love and war."

"Love! You call it love! Well, you've got to know. Love *did* come. But after. I'd have married anybody."

"*Don't!*"

"You despise me for that?"

"It's so much worse," Miranda said, "than anything that can happen to us to-morrow."

Esther winced sharply. The speech had cut her like a whip lash. "Oh, its all very well for you!—*you* weren't a poor parson's daughter, one of six scrambling after husbands! *You* hadn't been made to feel, since you were twelve, that the only refuge from the misery of governessing was to get some man to marry you. You weren't afraid of hardship, afraid of poverty, afraid of loneliness—afraid of life. Deathly, deathly afraid." Her voice broke. "If you'd been looking out all your youth for shelter—" she fell into a passion of weeping. "No. You had everything. That was how I made it seem right. And my wickedness prospered so!" She hung for a moment to her first realization of the strangeness of the years behind. "I don't know what I'm made of. For I've been happy here."

"No one," said Miranda gently, "could be with Hugh and not be happy."

The other struggled to regain a footing on some coign of justification. "After all what was a good marriage for me, would have been a come down for you."

Miranda shook her head: "We were both right so far. To have his love was to have the best that love can bring."

How she said that! "So . . . they haven't made you forget him, then?"

"*Forget*?"

Never till she died should Esther, in her turn, forget the accent of that word. "I'd like you to believe," she said, "I didn't realise how much you cared, till—"

"Till I turned against you so venomously. Oh, that was a muddy bit of road!"

"But now" Esther looked at her with miserable eyes. "Now, I've found shelter. And you are out in the storm." But it wasn't Miranda who shivered. "Let us get our cloaks," said Esther. They put them on in the hall. "You don't need your hat." But Miranda kept it in her hand. They walked in silence round the house. A group of men still stood about the heap of ruin. Esther felt herself drawn away. The two went silently out at the gate and across the field. The moonlight lay white on the close-cropped grass.

Near the far gate Esther stopped and looked round at Shipbroads. "We'll go back now."

Miranda seemed to hesitate. But there was no yielding in her face. Only a new tenderness. "I wouldn't leave you to-night," she said, "for anything but this." She rode over Esther's protest of "too late to order the carriage—." "The people of the Inn will have one waiting at the end of the lane." Miranda opened the gate with Esther following hard—"I shall catch the 10.15."

"I can't let you go!" Esther clung to her. "Listen. The woman he loved *must not* go out to meet that horror!"

"Some of us must meet it. We shall drive it before us to-morrow!" The sharp face shone like a sword.

"—you'll drag in the dust the dignity that was dear to Hugh!"

"Try to understand. I never knew what dignity was till I learned it in this service."

"—to stand in the street and be hooted at—! The struggle. The fighting—."

The low voice breaking in was stern to hardness. "You and I, Esther, didn't shrink from a struggle of a meaner sort."

"Say what you like about me. *He* played fair. For his sake, stay awhile, under his roof. You belong here," Esther said brokenly. "The old house is a shrine. Everything in it and about it that was dear to him—I've tended and cherished them, everyone. But I know he meant them all for you. Be generous. Come back. Think it's Hugh who's asking you."

"You live too much in the past, here," said the other gently. "You don't see there's a glorious present waiting a little way down the road."

"*Don't* look down the road." She turned to go back. One hand held the gate open. "Think that just over the meadow Hugh is waiting."

"I didn't find him there." She turned suddenly. "Shall I tell you where I found him? Out in the thick of the strife."

"*Hugh!*" The heavy gate slipped out of Esther's hold. It clanged between them. "Hugh!"

"I can only tell you he has never been so near me since—we parted, as he has been these last two years. Whenever my weakness needs him I feel him at my side. I hope you are not hurt to have me say that?"

The other woman stood in tears. "I seem to see you," she whispered, "as you'll be to-morrow. A bit of human drift in the storm. I see the police riding you down."

"I don't think I shall be ridden down."

"You imagine you can prevent it!"

"The horses are good creatures. I understand horses."

"What good is that when angry men are riding them?"

"I shall take the horses by their bridles."

"You don't think *that* will stop the men."

"The men are human."

"I've heard that even good men, in crowds, aren't quite human. Besides—there are the loafers—the hooligans."

"Even they are men. It is partly for their sake we go. Besides it wouldn't matter, now, if they were wild beasts. We must go out to meet—whatever comes."

"Good-bye then. I shall never see you again. Oh I was so sure if you knew he loved you, *that* would save you! I was ready

—I *am* ready if, for Hugh's sake, you'll do what I ask, for I'll do anything, *anything* for you."

The white face leaned over the gate. "Why not come with me?" Miranda said.

"With you!"

"If we stood side by side to-morrow we should wipe out that old dishonour."

Esther had fallen back. A good yard lay between her and the dividing gate. "You know," she said, with forced quietness, "it isn't in me. You might as well ask that rabbit scuttling to its burrow. Oh yes, I'm very like the rabbit." Her eyes turned home. The gate had swung open again. Close to Esther's shrinking Miranda's face was shining with a light greater than the moon can give.

"Yes, why not? Come with Hugh and me." She stood there, with that terrible brightness in her face, holding out her hand and saying "Come."

For one instant the other stood staring, fascinated. Dizziness made her seem to waver. The faint forward motion was checked and turned. The dilated eyes scoured the field of vision. Shipbroads swam in view. In its shadow-filled hollow the steep-pitched roof showed in the moonlight paler than by day. A flood of gratitude for the safety waiting there broke over the woman. She heard the carriage in the lane. She never so much as looked back. She ran across the meadow with hands out-stretched like a fugitive praying shelter.

. . . . . .

In bed that night, with curtains back and windows wide as always, she stared up at the rafters.

"Kind. kind," she said. And: "*Keep me safe.*"

The little carpenters were sawing and filing when she fell asleep.

No dreams, but in the middle of the night she woke again to that sense of immense disaster. What was it? It had come with a vague unnerving noise . . . a noise that echoed still. Oh yes, the chimney had fallen. Miranda had fallen. Trampled under iron hooves. Would to God Miranda had stayed here in safety, under the roof Hugh meant should shelter her.

But what was the matter with the roof? The woman lying under the rafters, caught her breath. Was it some trick of moonlight that made the timbers look askew? The ceiling sagged like the ceiling of one's cabin in a gale. Again that mysterious noise. A grating, a harsh sliding. The woman lay as still as the mice and rats. She had no illusion of being the victim of a nightmare. She knew herself awake in every sense and quick in every nerve. She saw the king-post sway like a drunken man. An oaken buttress shot out. It fell crashing to the floor.

The tons on tons' weight settled slowly down.

A glimpse of stars—a blow—a blackness.

Women's Suffrage

REPORT

OF THE

SCOTTISH WOMEN GRADUATES APPEAL

IN THE

HOUSE OF LORDS

November 10th and 12th and December 11th, 1908

PRICE THREEPENCE

SCOTTISH WOMEN GRADUATES APPEAL

IN THE

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PREFACE.

THE following is an almost verbatim report of the pleadings of the appellants, and a verbatim report of the decisions of the Lord Chancellor, Lord Ashbourne, and Lord Robertson. Lord Collins did not read a separate judgment, and the counsel for the respondents were not heard.

The five appellants were Margaret Nairn, M.A., Frances Simson, M.A., Chrystal Macmillan, B.Sc., M.A., Frances Melville, M.A., and Elsie Inglis, M.B., C.M., all of Edinburgh University. Names of graduates of the other Scottish Universities were omitted from the summons, in order to simplify it ; but the case was carried on by a committee of representative women graduates of the Universities of St. Andrews, Aberdeen, Glasgow, and Edinburgh. The committee is indebted to friends in all part of the country for having contributed to make their case possible.

The case was heard in the Court of Session in Scotland in July, 1906, and November, 1907, when counsel were employed ; but the committee decided that in the House of Lords it should be conducted by the appellants themselves—and this was accordingly done. The House of Lords, which for legislative purposes consists of the peers legal, temporal, and spiritual, delegates its powers to decide or interpret questions of existing law to its legal members. These law peers must have been judges in the high courts of England, Scotland, or Ireland, and they constitute the highest legal Court of Appeal from the courts of any of these countries. This Court sits in the House of Lords at Westminster, and there this appeal was heard,

In bringing the case before the House of Lords in its capacity of a Court of Appeal, it was necessary to argue that according to existing law the women graduates of the Scottish Universities had the right to vote—any discussion of the justice or expediency of giving them this right would have been quite irrelevant.

Two legal points, perhaps, should be explained. Common law is the name given to unwritten law or custom. According to English law a custom, in order to acquire the force of common law, must extend beyond the knowledge of man. This knowledge, according to Coke (Book II. chap. x. sec. 170), is to be measured by living memory and written evidence. The lower courts are bound by their own decisions, and by decisions in the House of Lords. That court is free to decide cases on their merits, and is only bound by its own previous decisions.

In 1868 the cases of Brown *v.* Ingram in Scotland and Chorlton *v.* Lings in England decided that a woman has not the right to have her name put upon a Parliamentary voting register. These cases were heard in the Registration Appeal Courts. It is not possible to appeal to the House of Lords from these courts or from any of the special courts established to decide questions of election law. For this reason, in raising the action originally the graduates' committee was particular to have it done in such a way that it was possible ultimately to appeal to the House of Lords, because only there can a final legal decision be reached.

The Lord Chancellor decided that women "are subject to a legal incapacity." Lord Ashbourne and Lord Robertson decided that women are not "persons." None of the judges make any attempt to explain the contradictions thereby introduced into the statutes. The Lord Chancellor practically admits the right in the sentence beginning "It is a dangerous assumption," and Lord Robertson's judgment takes the form of a rather elaborate apology for the foolishness of the legislature's having said what it did not mean. He says that it is not to be "inferred that so exceptional a privilege has been granted." The implication is that judges are to arbitrarily decide what may or may not be inferred from statute; in other words, that the statutes are only partly to mean what they say Perhaps it would be well to explain that "The Appellants' Case," "The Respondents' Case," and "The Appendix" referred to in the text are parts of a statement of the case printed for use in the House of Lords.

HOUSE OF LORDS.

TUESDAY, NOVEMBER 10th, 1908.

NAIRN AND OTHERS

v.

UNIVERSITY COURT OF UNIVERSITY OF ST. ANDREWS, AND OTHERS.

THE Lord Chancellor: The next case is that of Nairn and Others *v.* The University Court of the University of St. Andrews and Others. (To Miss Macmillan.): Do you intend to plead your case yourself?

Miss Macmillan: Yes, my Lord.

The Lord Chancellor: Well?

Miss Macmillan: It is as an appellant in this action that I bring the case before your Lordships. To show that there is precedent for such a course, I refer your Lordships to the case of Shedden *v.* Patrick (Law Reports, I. Scottish and Divorce Appeals, 1869, pp. 470 and 474). That report states that Miss Shedden pled her case before the House of Lords for twenty-three days (smiles), and that she was followed by her father, another appellant, who spoke for two days. Our appeal is from the Extra Division of the Court of Session in Scotland.

The appellants are five women, who are graduates of the University of Edinburgh and members of the General Council of that University. We are not allowed to graduate without paying a fee in order to have our names enrolled on the Register of the General Council, which is the statutory register of Parliamentary voters in a university constituency in Scotland.

We ask your Lordships to affirm that the women graduates of the Scottish universities are entitled to vote in the election

for the Scottish University Members of Parliament. The Universities of St. Andrews and Edinburgh jointly return one member to Parliament.

The Respondents in the action are the Right Hon. Alexander Hugh Bruce, Baron Balfour of Burleigh, Chancellor of the University of St. Andrews; the Right Hon. Arthur James Balfour, Chancellor of the University of Edinburgh; and the Vice-Chancellors, the University Courts, and the Registrars of these Universities.

The Vice-Chancellor of the University of Edinburgh is the Returning Officer in the election of a Member of Parliament to the Universities of St. Andrews and Edinburgh, and he has over and above the duties imposed on other Returning Officers certain additional judicial duties to perform in connexion with University elections. The University Courts are parallel to the Sheriff's Registration Court in other Elections, and the Registrar has work in connexion with this election similar to that of the Clerk in other elections.

The Appellants were the pursuers in the lower Court, and the Respondents were the Defenders. On p. 6 of the Appellants' Case there is set forth in the Summons the Particulars of our Claim. We ask your Lordships to declare: "(1) that prior to December 31st, 1905, and at the date of the demand for a poll at the election of a Member of Parliament for the Universities of St. Andrews and Edinburgh the pursuers were, and have since been, and now are on the Register of the General Council of the University of Edinburgh; (2) while and so long as the pursuers are on the said Register they are entitled at the present and on the occasion of any and every future Parliamentary Election for the said Universities—

"(*a*) To receive Voting Papers from the Registrar;

"(*b*) To vote by duly marking the same; and

"(*c*) To have their votes so given duly counted.

And (3) whether decree is pronounced in terms of the conclusions above written or not, the Defenders, or at all events the said Registrar of said University of Edinburgh, ought and should be decerned and ordained, by decree foresaid, to make payment to each of the pursuers of the sum of 5*l*. sterling; and the Defenders, or such of them as appear to oppose the conclusions hereof, ought and should be decerned and ordained, by decree aforesaid, to make payment to the Pursuers of the sum of 100*l*. sterling, or such other sum as our said Lords shall modify, as the expenses of the process to follow hereon; conform to the laws and daily practice of Scotland, used and observed in the like cases, as is alleged."

This latter part of the Summons we have not pressed, but we ask the claim for damages.

The principal pleas of the Respondents in this action are on p. 12 of the Appellants' Case. The main pleas are those marked "3" and "4." The Respondents ask that:—

3. "The pursuers being incapacitated by reason of their sex from voting at the election of a Member of Parliament for the said Universities, the Defenders should be assoilzied from the declaratory conclusions of the Summons, with expenses.
4. "In respect that the statutes and ordinances founded on by the pursuers do not confer upon them any right to vote at the election of a Member of Parliament for the said Universities, the defenders are entitled to absolvitor from the declaratory conclusions of the Summons."

The other pleas are unimportant.

At p. 16 your Lordships will find the Supplementary Statement. I will first take up the special sections of the special Acts dealing with this franchise. The Acts dealing with the franchises of the Universities of Scotland are different from those dealing with any other Parliamentary franchise, at least the Sections referring to the Scotch University Elections are distinct from those which regulate any other Parliamentary election, and also from those which regulate the University elections of England, and the enactments dealing with such (*i.e.*, Scottish) University elections are quite complete in themselves, and everything with reference to these elections is to be found within the four corners of the one or two Acts referred to.

The first Section referring to the University Franchise, the section conferring the franchise on the University Graduates in Scotland, is Section 27 of the 1868 Act (31 & 32 Vic., chap. 48). That section provides that "every person whose name is for the time being on the Register, made up in terms of the provisions hereinafter set forth, of the General Council of such University, shall, if of full age and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such University in terms of this Act."

The following section of the same Act sets forth the conditions under which individuals are registered on the General Council referred to in Section 27. Section 28 of this Act provides "under the conditions as to Registration hereinafter mentioned, the following persons shall be members of the General Council of the respective Universities, viz. (1) all persons qualified under the sixth or seventh section of the Act 21 & 22 Vic., chap. 83." That Act was passed in 1858, and dealt with University matters. It established this General Council, but no Register was established in that Act. And on the General Council are "(2) all persons on whom the University, to which such General Council

belongs, has, after examination, conferred the degree of Doctor of Medicine, or Doctor of Science, or Bachelor of Divinity, or Bachelor of Laws, or Bachelor of Medicine, or Bachelor of Science, or any other degree that may hereafter be instituted."

In that 1868 Act there were certain sections which dealt with the taking of the poll at University elections. But in 1881 all these sections were repealed, and in place of them, we are told, in the 1881 Act (44 & 45 Vic., chap. 40) referred to on p. 17 that the 1881 Act is to be inserted in the 1868 Act in place of the repealed sections. The 1881 Act is entitled, 'An Act to make further provision in regard to the registration of Parliamentary voters, and also in regard to the taking of the poll by means of voting papers in the Universities of Scotland.'

Section 2, Sub-section 3, of that Act gives the Registrar certain duties to perform in connexion with the taking of the poll. It says: "In case of a poll, the Registrar of the University ....shall issue simultaneously through the post a Voting Paper ....to each voter to his address as entered on the Register of the General Council of the University, who shall appear from said address to be resident in the United Kingdom or the Channel Islands." That is the only restriction put upon the Registrar.

Then Sub-section 10 of the same Section 2 of the 1881 Act gives special powers to the Vice-Chancellor as Returning Officer in the University election over and above the powers which are given to Sheriffs in other elections. It sets forth that "it shall be lawful for any candidate, or the agents of the candidates who may be in attendance, to inspect any Voting Paper before the same shall be counted, and to object to it on one or more of the following grounds." The second ground of objection is "that a person giving a vote by a Voting Paper is not qualified to vote," and the rest of the section goes on to say, "And the Vice-Chancellor or one of his pro-Vice-Chancellors shall have power to reject or receive, or receive and record as objected to any Voting Papers."

Another section of the same Act, Section 2, Sub-section 16, provides that no person shall be allowed to graduate at any of the Scottish Universities without having first paid the General Council Registration fees and been duly registered as a Member of the General Council. So we cannot become graduates until we are put on this Parliamentary Voting Register. It concludes with the following proviso: "Provided always that no person subject to any legal incapacity shall be entitled to vote at any Parliamentary Election or exercise any other privilege as a Member of the General Council of any University." Other privileges we have always been allowed to exercise.

At that time women were not entitled to become graduates of the Universities of Scotland. That was decided in the case of Jex Blake *v.* The Senatus of the University of Edinburgh. That case is to be found on page 784 of the Law Reports, XI. Macpherson. On that case—which was considered a very important case—the whole of the Judges of the Court of Sessions sat, and, in the decision thirteen judges were sitting, and of these thirteen Lord President Inglis gave no decision, as he was an official of the University, and of the other twelve, seven gave against the women and five gave for the women. But the women gained their case in the Lower Court, and the total majority was only seven to six, so there was very little between their right and the absence of their right. At that time women were attending University Classes, which were held by Professors and Lecturers of the University of Edinburgh. These classes were instituted in 1867, and it was a question very much under discussion at that time whether or not women should be admitted to the Universities. But in 1889 an Act was passed, the University of Scotland Act, 52 & 53 Vic. chap. 55. That Act deals exclusively with University affairs and appointed Commissioners to regulate various matters of University administration. Under Section 14 of the Act the Commissioners had power, "after making due inquiry, to make ordinances for all or any of the following purposes as shall to them seem expedient." And the 6th of these items is "to enable each University to admit women to graduation in one or more faculties and to provide for their instruction." Afterwards, in 1892, the Commissioners in pursuance of the powers given them in that section made the following Ordinance. Ordinance 18, dated February 22nd, 1892, that Ordinance is given in the Appendix, page 13. The Ordinance is to the effect that "it shall be in the power of the University Court of each University to admit women to graduation in such faculty or faculties as the Court may think fit." These are the principal sections of the Acts on which our case is founded.

Now to take up the facts of the case. Since that Ordinance of 1892, women have graduated in a variety of faculties in both these Universities, and they were not allowed to graduate without being put upon the Register of the General Council, the Register of Parliamentary voters, and they have exercised all the privileges of membership except this privilege, which it is suggested that they have not the right to exercise. The Universities of Edinburgh and St. Andrews jointly return a Member of Parliament. But although women first became graduates in 1893 there was no contested election in either of the Scotch University constituencies till 1906. In 1906 there was a contested election, and the women expected that they would have

Voting Papers sent them for this election. But as these Voting Papers were not forthcoming we then sent a request to the Registrar asking for the papers, and they were refused, and in consequence of this refusal it was necessary for us to bring this action. We raised this action in the Court of Session, and we now ask, as set forth in the Summons, your Lordships to declare "that prior to December 31st, 1905, and at the date of the demand for a poll the pursuers were and have since been and now are on the Register of the General Council of the University of Edinburgh; and secondly, that while and so long as the Pursuers are on the said Register, they are entitled at the present and on the occasion of any and every future Parliamentary Election for the said Universities (*a*) to receive Voting Papers from the Registrar, (*b*) to vote by duly marking the same, and (*c*) to have their votes so given duly counted."

When these matters were taken up in the Lower Courts the fact that we were duly entered on this Register was admitted. It was admitted both by the Lord Ordinary, see Appendix, page 5: "all the Pursuers are members of the General Council of the University of Edinburgh, and their names are *duly* entered in the Register of such members," and by the Judges of the Extra Division Appendix p. 11 C. "The Pursuers' names have been placed on the Register of the General Council of one of these Universities *in right of* their respective degrees."

Two points, however, were argued in the other Courts, namely, our right to receive Voting Papers from the Registrar, and the right of duly marking these Voting Papers, and of having our votes duly counted. The decision on these points was in both Courts adverse, and we ask your Lordships to affirm that the decisions of the Lord Ordinary and of the Extra Division of the Court of Session are not well-founded in law.

Before taking up the legal arguments, I should like to make a few general observations on the points which distinguish this franchise from other franchises. It is a newly established franchise, and it is based on quite different qualifications from the other franchises. The other franchises, all of them, have some connexion with property and with the principle that taxation involves representation. But this franchise is quite distinct; an intellectual test is required. The constituency also differs; it has no geographical limits, that is, only the geographical limits of the United Kingdom. Only those whose names are not entered on the Register under an address in the United Kingdom or the Channel Islands are not entitled to receive Voting Papers from the Registrar. In another way this constituency differs from other constituencies because here the electors have a certain power to alter the qualifications necessary to a voter in the constituency. The Professors lay down the

conditions and the standards of the examination; besides, the members of the University have power to suggest alterations in the constitution—they may establish new Degrees, while in other constituencies the qualifications are definitely laid down, and there is no reference to enlargement in the future. The sections of the Statute dealing with the Scotch Universities are quite distinct from the Sections dealing with the elections in other constituencies. For example, almost every section of the Ballot Act is specifically declared to have no connexion with University elections, and the enactments regulating our election differ from those regulating the elections in the constituencies of the Universities in England and Ireland. The Franchises of Oxford, Cambridge, and Dublin are in some way relics of the older franchises; but this is a newly established franchise, and has no connexion with anything that has gone before. It is quite a new creation of this Act, and every particular having reference to the conduct of the election is in the above-mentioned Acts themselves, and not to be taken from anything outside these Acts.

The Court of Session was the only competent Court before which this action could be brought, because the other Courts, such as the University Court and the Registration Appeal Court, have special work given to them by Parliament.

The University Court deals with undue insertions and undue omissions from the Register; but we are admittedly duly inserted on that Register. The Sheriff's Registration Court deals only with Registration in Counties and Boroughs, and similarly, the Registration Appeal Court deals only with the undue insertion or the undue omission of names from the registers in Counties and Boroughs; and the Election Petition Court deals only with the undue Election or the undue Return of a Member of Parliament, and does not refer here. This was admitted in both the lower Courts.

But there is one Court established by Law before which we could have taken part of this question, but by the action of the Registrar we have been forbidden to go before that Court. As set forth in the Appellants' case, page 18b, you find the particulars of the Court which is held by the Vice-Chancellor during the counting of the votes, 1881 Act, S. 2 (10). Here the Vice-Chancellor, on objection being taken by a Candidate or the agent of a Candidate, has a right "to inspect any Voting Paper before the same shall be counted, and to object to it on one or more of the following grounds," &c. He has this power given to him over and above the power given to the Sheriff in other elections, and this Vice-Chancellor's Court is specially established by the 1881 Act, which is to be read in place of the repealed sections of the 1868 Act. This Court is established in the Franchise

Act to deal with these particular questions. The fact that the Registrar refused us our Voting Papers made it impossible for us to bring the main question before the properly established Court of Law, and we had no other method of getting redress except by bringing this action before the Court of Session in Scotland to have it declared that we had been prevented by this unauthorized action of the Registrar from taking our case to the proper Court. I may make this distinction more clear by reading from the 1881 Act the difference between Section 2, Sub-section 9, and Section 2, Sub-section 10. In Section 2, Sub-section 9 certain powers are given to the Vice-Chancellor, ministerial powers. He has only discretion in rejecting Voting Papers which have any technical irregularities. Sub-section 9 sets forth that "any Voting Paper which has not the official mark and the number on the back as appearing on the counterfoil, or which is, in the opinion of the Vice-Chancellor otherwise wanting in any of the essential conditions required by this Act shall not be counted as a vote in the election." The Vice-Chancellor is here instructed to reject and disown any Voting Paper which is irregular. That duty is similar to the duty imposed upon the Sheriff in the Ballot Act (35 & 36 Vic., chap. 33). Section 36 defines his duties at the counting of the votes. The Sheriff's duty is purely ministerial; he has no discretion as to the qualification of the voter. But to the Vice-Chancellor, over and above these ministerial duties, are given the duties set forth in Section 2 (10) of the 1881 Act, where it says: "The Vice-Chancellor on objection being taken by the Candidate or the Agent of the Candidate may reject," for a variety of reasons, the most important for our purpose being that "the person giving a vote by the voting paper is not qualified to vote." And in being prevented from going before this Court we have not been able to have the proper legal decision made on this question, besides having been prevented from going to this Statutory Court. This assumption of the Respondents would mean that the Registrar had greater power than the Vice-Chancellor, who is the Returning Officer. The Vice-Chancellor may only reject these papers if objection is taken; but the Registrar has taken upon himself to reject the papers without objection being taken, and he is presuming to do more than is in the power of the Vice-Chancellor, and this, in itself, seems absurd, as it is very definitely laid down in the Act exactly what the Registrar's duties are. They are purely ministerial. We find—1881 Act, s. 2 (3)—he is instructed to send a Voting Paper to each voter. He has this Register of the General Council, and on the Register it is not mentioned whether the individuals are men or women, and the only discretion he is allowed to use is that he may state whether the address is in the United Kingdom and Channel Islands, or whether it is outside

these countries, and that is the discretion he may use. His only guide is the Register itself, and he must carry out the instructions there to send the Voting Papers to each voter, and it is important to notice that the title of this 1881 Act is: "An Act to make farther provision in regard to the registration of Parliamentary Voters, and also in regard to the taking of the poll by means of Voting Papers in the Universities of Scotland." Now the only section which deals with registration is Section 2, Sub-section 16 of that Act, and that section has always been applied to women, and under that section women have exercised all the privileges of membership, so that the result is that the women to whom the Act has been applied are Parliamentary Voters; besides, it is common knowledge that the Registration Acts before the date of the passing of this 1868 Act forbade the Returning Officer to ask any questions of the voter except whether he is the person whose name is on the Register, and whether he has previously voted at the Election, and the Returning Officer has no power to reject votes except on these grounds. So that the custom is that, if a name is legally entered on the Register that vote must be counted, and I submit that there is no answer in Law to our statement that we have the right to obtain Voting Papers from the Registrar. Coming to the House of Lords to-day I was stopped by the policeman, and if he had prevented my entrance that would have been much as if he had said to me, "Your case is a bad one; there is no use your going in, and I won't admit you to the Lord Chancellor." But if the policeman had done that I could have taken him to whatever court in England corresponds to our Court of Session in Scotland. In the same way this Registrar has forbidden us to go before the properly established Court, and we have therefore taken the case to the Court of Session in Scotland to have the matter decided in law. We ask to have it declared that he is bound to give us our Voting Papers. A statutory duty is imposed upon him by this Section 2, Sub-Section 3 of the 1881 Act. It seems that there is no answer to that part of our claim.

But our right to Voting Papers is quite subsidiary to the main part of our claim. The section giving to a graduate of Scotland the right to vote in a University Election is Section 27 of the 1868 Act. There it provides that "every person whose name is for the time being on the Register, if of full age, and not subject to any legal incapacity, shall be entitled to vote." Now, we are admittedly on the Register, and the question comes to be: Are we "persons"? are we "of full age"? and are we "not subject to any legal incapacity"? We are admittedly of full age, so the question comes to be, Are we "persons"? and are we "not subject to any legal incapacity" within the meaning of this Act? I submit that if we are "persons,"

and if we are "not subject to any legal incapacity," inasmuch as this Act is applicable to us, we are entitled to vote and have the vote counted in the election of University Members for Scotland—because we are on the Register; that is admitted. I repeat that the necessary qualifications for the exercise of this franchise are (*a*) that we are persons, (*b*) that we are on the Register, (*c*) that we are of full age, and (*d*) that we are not subject to any legal incapacity. So as the points that we are on the Register and are of full age are admitted, the questions that come to be argued are: Are we persons? and are we subject to any legal incapacity?

Now I submit that the word "persons" in its ordinary signification includes both men and women. We should expect to find a different word here if the franchise was to be conferred only on male graduates. That "persons" means both men and women is the natural sense of the word. Besides, it is to be remarked that in the other enabling sections of the same Act it is the word "man" which is used. You will find that Sections 3, 4, 5, and 6 of the 1868 Act, which deal with County and Borough franchises, and which confer new franchises in Counties and Boroughs, use this word "man." In these sections of the Act the words are: Section 3: "Every man shall in and after the year One thousand eight hundred and sixty-eight be entitled to be registered, &c." And in all these Sections we have the same limitation "not subject to any legal incapacity."

The Lord Chancellor: We must stop now, and we propose to continue this argument on Thursday morning at 10.30.

SECOND DAY'S HEARING.

THURSDAY, NOVEMBER 12th, 1908.

Miss Macmillan: May it please Your Lordships, in speaking of the University Franchise in Scotland, I said it was distinct from ordinary franchises in that it is dealt with in enactments peculiar to the Universities of Scotland. In the 1881 Act a duty is imposed on the Registrar with regard to sending out Voting Papers to the members on that Register, namely to every one whose address is in the United Kingdom or the Channel Islands. The action of the Registrar made it impossible for us to bring our case before the Special Court established by the amendment to the 1868 Act, which was passed in 1881. I omitted to draw a comparison between the manner

in which the University voter is safeguarded with the manner in which other voters are safeguarded. The University voter is twice safeguarded, and similarly the voter in Counties and Boroughs is twice safeguarded. In Counties and Boroughs it is possible to object to an undue insertion or undue omission from the Register in the Sheriff's Registration Court, and from that Court there is an appeal to the Registration Appeal Court in which the question can be again discussed and the rights of the voter are again safeguarded. In the case of the Universities the franchise is quite different, but there is the same double safeguard. It is possible to bring a case of undue insertion or undue omission before the University Court, and the decision of the University Court is final. But a Court is established by the Franchise Act in which the Vice-Chancellor, *i.e.*, the Returning Officer at the election, considers questions such as the qualification of the voter. That is in Sub-section 10 of Section 2 of the 1881 Act. In that Sub-section 10 the special duties of the Vice-Chancellor are laid down: "It shall be lawful for any candidate or the agents of the candidates who may be in attendance, to inspect any Voting Paper before the same shall be counted, and object to it on one or more of the following grounds" —and the grounds follow. Now, of course, in ordinary County and Borough elections an objection may be taken by any individual who has a right to be on the Voting Register. It was not necessary to make that provision for the University Election, because when the Register is made up and corrected before the Registration Appeal Courts there are no candidates standing, but in the case of the Vice-Chancellor's Court the votes are being counted, and the candidates are the parties most interested in the election, and it is not probable that any bad vote would not have an objection taken to it. For this reason, too, over and above the other reasons I have stated, it seems very clear that we should have had judgment given on the point by the proper Court established by the Act. That is the proper time when our right to vote should be determined. It would be a strange thing if the right of the University voter was not safeguarded as well as the rights of the voters in other constituencies. We say that it was the duty of the Registrar to issue that paper, and if your Lordships do not give a decision on that point, the duties of the Registrar are left uncertain; and it is important that his duties should be made quite certain, and for the various reasons I have stated I think that these duties are certain. The Registrar in refusing these Voting Papers took upon himself to do more than was given to the Vice-Chancellor. The Vice-Chancellor has only the power to reject the votes on objection being taken, and it would be very curious if the Registrar, who is a mere servant, can reject the

votes when no objection has been taken. And, besides that, I would point out that the Vice-Chancellor is not a member of the University Court. It might be said that, if he had been a member of the University Court, his opinion had already been given when the question of the Register came up before the University Court. But he is not a member of such Court; he, at the poll, sits as a Higher Court of Appeal on the subject. That is my argument, and the first point is we are entitled to have the Voting Papers. It is quite independent of the other questions; it stands by itself. The argument of the Respondents on that point is that they consider the one question depends on the other. But I think your Lordships will see from the particulars I have brought before you that the points are distinct, and that we are entitled in law to have these Voting Papers issued by the Registrar, and to have a decision given on them by a proper Court.

But the main point of our argument is what follows. You will find the section which confers the right to vote on Universities on page 16 of the Appellants' Case at letter "f." I will read that section of the Act again, as it is the section which confers the franchise on University Graduates. It says that "every person whose name is for the time being on the Register, made up in terms of the provisions hereinafter set forth, of the General Council of such University, shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such University in terms of this Act."

There are a great many very important provisions in these lines. To prove that we women appellants have the qualifications for the vote in University elections, we must show that we are "persons," that our names are entered on the Register "of the General Council of the University," "in the terms of the provisions hereinafter set forth," that we are "of full age," and that we are not "subject to any legal incapacity." The point that we are on the General Council is common ground. That is admitted by the Respondents, so the two main questions to be argued are; that we are "persons," and; that we are "not subject to any legal incapacity," within the meaning of this section of the Act. If we satisfy your Lordships on these two points, we claim that we are entitled to exercise this franchise in the Universities under the Franchise Act of 1868.

To take first the word "person," and my argument on the word "person" differs from my argument on the expression "not subject to any legal incapacity," because the meaning of the word "person" is expressed in an interpretation clause which is embodied in this 27th Section of the Act. But the Act itself does not interpret "legal incapacity." The 27th Section

points out that "person" means any one "whose name is for the time being on the Register, made up in terms of the provisions hereinafter set forth," and this "person" is so defined. The meaning of "person" there is referred to the meaning of "person" in the following section, Section 28, which states the qualifications necessary for any member of the General Council. We are referred for the meaning of the word "person" in Section 27 to this Section 28, which gives the explanation of who is to be a person. Now that is one of the points which is admitted by the other side, I mean that we are persons within the meaning of the 28th Section of the Act, because the Respondents have admitted that we are rightly on the Register. And this word "person" of Section 27 being interpreted by Section 28 it is obvious that the word "person" in Section 27 includes the women referred to, and admittedly referred to, by the Respondents, in Section 28. It is unnecessary to say much on the natural meaning of the word, because every one admits that the word "person" does include both men and women. But this is made more apparent in this particular Act when we contrast it with the word which is used in the other enabling sections of the same Act. The other enabling sections which deal with franchises in Counties and Boroughs use the word "man" in conferring the franchise. I will read one of these enabling sections in the 1868 Act, Section 3. There it sets forth that "every man shall in and after the year....be entitled to be registered as a voter, and when registered, to vote at elections for a member.... to serve in Parliament for a Borough," "if of full age and not subject to any legal incapacity." The same restriction is imposed on the "man" which is imposed on the "person" in the other section of the Act; and Sections 4, 5, and 6 use this same expression "man." It is very remarkable that the word "person" in the section of which we are speaking should be different from the word "man" in the other enabling sections of the Act. I would refer your Lordships to a case which will, no doubt, be brought up against us by the Respondents—that is the case of Chorlton *v.* Lings. It is to be found in vol. iv. Court of Common Pleas, 1868–69, 32 Vic., on page 387. The Report begins on page 374, but I am going to read from page 387. Although I am not using the book itself, I am using a verbatim report which I have in another form. In that Report of the case at page 387 at the top of the page Chief Justice Bovill says: "The conclusion at which I have arrived is that the Legislature use the word 'man' in the Act of 1867–8 in the same sense as 'male person' in the former Act, that this word is intentionally used in order to designate expressly the male sex." Now, he has definitely stated that the word "man" is used in the 1867

Act definitely meaning "male person." At page 385 of the same case the same Chief Justice Bovil says: "In construing the 3rd Section of the Representation of the People Act, 1867, regard must be had to the whole of the enactment with a view to ascertain whether the word 'man' is there used in the sense of a 'person' or as equivalent to the expression 'male person.'" Now, he understands by the word "person" that women are included. He has stated that in two different forms that I have read to your Lordships. To give you other examples of the use of this word "person," I would refer you to the School Board Act of 35 & 36 Vic., c. 62. The qualifications of a voter are there set forth in Schedule B., Sub-sec. 2, and the same words are used in conferring the franchises on those who are to vote for members of School Boards as are used in conferring the Franchise on the Universities, and your Lordships know well that women have always voted for members of School Boards. That Act was passed within two or three years of the 1868 Act of which we are speaking, and if the contention brought forward by the Respondents that women may not exercise a *munus publicum* is correct, it would have been impossible for women to vote under this section. There is no question that the word "person" in the School Board Act does refer to women. There was one case which arose in Scotland, and the question was whether a married woman had a right to vote under that Act. The case was decided in the Sheriffs' Court by Lord Fraser, who was Sheriff Fraser at the time, and he decided that a woman, even if married, was a "person" within the meaning of that Act. The case is Ramsay *v.* Craig, and is to be found in the 20th 'Journal of Jurisprudence,' page 483. No other question has arisen on that subject. Then again, if we look to other Franchise Acts we find in England, for instance, the Municipal Act of 1835 gave the franchise to "male persons." That Act was amended in 1869, and in 1869 the word "male" was dropped out of the Act, and that was taken to mean that women thereby acquired the right to vote. The Acts are 5 & 6 William IV., c. 76, Sec. 9, and 32 & 33 Vic., c. 55, Sec. 1. Again, we find in the Electoral Code of New Zealand the same expression is used, "persons not subject to legal incapacity." The date of the passing of that Act in New Zealand was 1893, and under that Act women have always voted for the members of Parliament in New Zealand. The word "person" is used in that Act. Similarly in the Isle of Man, the words used in the Franchise Act in the year 1881 are "persons not subject to any legal incapacity," and that was declared to have conferred the franchise on women. It is true that in both these Acts women are referred to in other sections, but the point I am making at present is that the word "person" in these Acts

applies to women. There is no interpretation Clause in either Act. It is made to apply to them. Nothing said about women in other sections of the Act would bring the meaning of the word "woman" into a word which had not that meaning. Then, too, in the 1881 Amendment to the 1868 Act we have the word "person" used in certain sections which admittedly apply to women. That Act, Section 2, Sub-section 16, I have referred your Lordships to before. It is the 1881 Act we have spoken of. It is in the Appellants' Case, 44 & 45 Vic., c. 40. That is the Act which is substituted for the repealed sections in the 1868 Act, which is read as part of the 1868 Act, and there in Sub-sec. 16 we have: "On and after the passing of this Act no person shall be allowed after examination to graduate at any of the Universities of Scotland until he shall have paid, the General Council Registration Fee, in order to be entered on the Registration Book," and at the end of that sub-section we have the proviso: "Provided always that no person subject to any legal incapacity shall be entitled to vote at any Parliamentary election, or exercise any other privilege as a member of the General Council of any University." Now all parts of this section have been applied to us. We, as persons, have not been allowed to graduate until we paid this Registration Fee, and under the word "person" in the proviso at the end of the sub-section we exercise all the privileges as members of General Council, except the privilege which the Respondents suggest we may not exercise. So we are persons within the meaning of this section of this Act, and this Act is substituted for the repealed sections in the 1868 Act, which confers the franchise on us. It is purely an election Act. Its title, as I mentioned before, is "An Act to make further provision in regard to the registration of Parliamentary voters, and in regard to the taking of the poll by means of voting papers in the Universities of Scotland." So it deals purely with election matters, and that section has always been applied to us. Then I pointed out at the beginning of my remarks on the word "person" that Section 28 of the 1868 Act defines the meaning of the word "person" in Section 27 which confers the franchise. And the definition is, "All persons qualified under the 6th or 7th Section of the Act 21 & 22 Vic. c. 83." The Act referred to is an 1858 Act, which deals with University matters, which established General Councils and laid down conditions for members of General Councils; but it makes no provision for the registration of those members. The first provision made in the statute for the registration of these members is in this 1868 Act in this particular section from which I read that extract. Sec. 28 further says, "All persons on whom the University to which such General Council belongs has, after examination, conferred "certain degrees," or any other degree

that may hereafter be instituted." We have obtained these degrees and we have been registered under this section, and this word " person " has been applied to us, and admittedly and rightly applied to us. The Respondents have admitted that fact, and this Section 28 is the section which interprets the meaning of the word " person " in the conferring section of the Act.

We have in support of our contention that the word " person " refers to women, a case called The Queen *v.* Crossthwaite, 17th Irish Common Law Reports, page 157. That was a case dealing with the Town Improvements (Ireland) Act, 1854. Sec. 22 defines the qualifications of voters at the election of Town Commissioners : " Every person of full age who is the immediate lessor " ; also, " every person of full age who shall have occupied as tenant or owner or joint occupier, or shall have been immediate lessor of any land." The decision held that women of full age were admissable to vote under this section. And the further question was whether women were eligible as Town Commissioners. But that second part does not concern us. On page 161 Chief Justice Lefroy said : " It will be found, I think, in this case, as has been said in other cases by very eminent judges, that the soundest construction of the Act—or as I would rather say of the document, whether it be a deed or a will or a statute—will be made by what appears within the four corners of the instrument, and accordingly we have attentively considered the various provisions of this Act in reference to the particular question which we have to decide, and we think it will be found that the rule which I have laid down for construing a document or statute, and which has been sanctioned by the highest authority will be fortified in respect of its usefulness and correctness, particularly in this instance." That is the opinion of an eminent judge that the construction of an Act is to be found within itself. He further goes on to say on page 162, about the middle of the page : " One main ground of the prosecutor's argument has been that we cannot arrive at the conclusion that females are entitled to vote for Town Commissioners, because the inference would follow that they might also be themselves Town Commissioners, and that the absurdity which would attend such a conclusion as that would necessarily attach both to the qualification to be a Commissioner and to the qualification to vote for Commissioners. That is, no doubt, a strong ground of argument to the title of the Act, and the duties to be performed by the Town Commissioners. I may say that nothing can be more distinct in respect to the provisions of the Act than the difference between the qualification to be a Town Commissioner and the qualification to vote for a Town Commissioner." And that statement, made there by this judge, has been borne out by legislation referring to the giving of votes

to women for other bodies, and of their right to sit on these bodies. On page 165 the same Justice says, " Having disposed of the question who were to be entitled to have a notice to be summoned, we will now proceed to the 7th Section, which gives the qualification of the persons entitled to be admitted and to vote at that meeting. After specifying that the persons hereinafter mentioned shall be the persons entitled to be admitted to vote thereat. How are they described ? Thus—' that is to say, every person of full age who is the immediate lessor of lands, tenements, and hereditaments within such town.' There is here an omission of the word ' male ' which would limit the qualification for the right to vote, leaving it open under the word ' person,' and where the Legislature meant to impose any restriction upon the word ' person ' they have done so. Here it is, ' every person of full age,' without any restriction in point of sex ; clearly indicating that where the Legislature meant to restrict the meaning of the general term ' person ' they did so expressly. Well then, the right to be admitted to vote at such meeting is given in the terms I have stated ; and therefore *ex vi termini* includes every person not restricted who could be embraced under the general term ' person ' so qualified as is set forth in that section." On page 166 the same Justice goes on to say : " But when we come to the meeting which is to be convened for the election of Commissioners it is enacted that at the first and every other meeting for the same purpose the persons admitted and entitled to vote shall be qualified as follows : ' Every person of full age '—not a word about sex—' who is the immediate lessor of lands, tenements, and hereditaments to the value of £50 ; and also every person of full age who shall have occupied as tenant or owner or joint occupier, or shall have been the immediate lessor, rated to a certain amount.' Upon that section depended, in fact, the case which is now before us. We must decide upon its interpretation, not only by the affirmative words where qualification was designed by the Legislature, but by the omission of words which would be essential to disentitle the claimants here. We find a qualification which is not now the question of the subject introduced ; and the omission of a qualification which would be the essential one upon which we are to inquire. We think both on the affirmative and the negative evidence the claimants who now complain of the non-admission of their votes were entitled to be admitted, and to vote for the election of Commissioners." On page 167, Justice O'Brien agrees with these views. It is not necessary to read his statement. At the end of his remarks on page 172, the last paragraph of the page : " Counsel for the relator have also relied on the fact that females are not yet entitled to vote at the elections of town councillors in corporate towns, or at the

election of members of Parliament. But by referring to the Statute regulating the rights of persons to vote at such elections it will be seen that the words of the Statutes expressly confine those rights to males. The Municipal Act which defines the qualifications of burgesses uses the word 'every *man* of full age,' but the Reform Act uses the words, 'every *male person* of full age,' and similar words are used in the subsequent Act 13 & 14 Vic., c. 69 for regulating the electoral franchise in Counties and Cities. It appears, therefore, that in those cases the intention of the Legislature to exclude females was manifested by the use of words which expressly confined the right to males, whereas in the Act now before us the terms which define the qualifications for the right are such as according to the interpretation clause include females as well as males." And on page 173, Justice Hayes says: "There is nothing in the principles of the Common Law or in the enactments of any Statute which exclude females from voting for Town Commissioners. With respect to the general rights to vote, everything has been said that is necessary, and I concur in it. When we look at the nature of the duties of the office I do not find anything which, in the performance of those duties, involves the necessity of a female outraging the modesty and retiring disposition which so well become her sex. All that she has to do is to appear before the Returning Officer, answer a couple of questions, and hand in a paper. But what is the duty to be done by the Commissioners for whom she votes? They are entrusted with the disposal of property to considerable amount to be employed in carrying into execution all or some of the several purposes mentioned in the preamable to the Act 17 & 18 Vic., c. 103, and this property is to be realized by contributions levied out of the pockets as well of females as of males. Upon the general principle that there shall be no taxation without representation, and that it is not inconsistent with justice and common sense that females should have a voice in the election of persons who are to manage property which by the law of the land females are allowed to acquire and to hold, I think that the first question in the special verdict should be answered in favour of the claimants." And Justice FitzGerald concurred. That is, four Judges in this Court agreed that the word "person" where voting rights were conferred included women. This case was appealed against, and was heard in the Exchequer Chamber, June 6th. It is reported in the same volume at page 463. On this occasion it came before seven Judges, and the decision was reversed by four to three, but it was not on the general ground on which the decision was founded on the first occasion, but on special grounds. On page 471 of that Report Baron Deasy explains the ground on which he alters the judgment. "Now the Glossary Clause, so

far as relates to the present question, is that words importing the masculine gender, except only the word 'male,' shall include female. But that is contradicted by the general saving at the commencement clause, unless there is something in the subject or context repugnant to such construction. Is there anything, then, in the context repugnant to such construction? I think there is the 7th Section, which defines the qualifications of the persons who are to vote at the Meeting which is to decide whether the Act is to be adopted or not, and uses terms quite as general as the 22nd Section, and differs from it only in the amount of the qualification required. But it is plain from Schedule A that by the general words then used the Legislature did not intend to include females; for by the form of notice of meeting given in the Schedule, males only were to attend to vote. Again, in Section 25, where the qualification of Commissioners is defined, words equally general are used; and yet it is plain, I think, both from the language of that section, particularly the exception section as to ecclesiastics, and from the nature of the duties imposed upon them and the powers given to Commissioners, that it never was intended that a female should be elected to the office. Indeed, it was expressly admitted by Mr. Heron that under this section women could not be elected to fill the office of Commissioners. I think, therefore, that looking to the provisions of this Act and its object, and the provisions of the analogous Act dealing with the same subject matter, we ought not to control the plain words of the 22nd Section by the general declaration of the Glossary Clause; but that we ought to give it such a construction as will give effect to every part of it, and at the same time make it, or rather keep it, consistent with the previous enactments of the Legislature and the policy there expressed." So it was reversed merely on the ground that the word "person" depended for its meaning on another section of the Act in which male persons were expressly referred to; they did not say that the words did not include women, they said it referred to another section of the Statute in which the words "male persons" were used. Then Baron FitzGerald concurs, and the statement of his I wish to read is on page 477 about one-third way down the page. "But when I find it clear from the Act itself that one of the class of the persons eligible for the office must be males—that the person proposing the officer to be elected and the person seconding such proposition must be males—I feel that the Legislature must have so far trusted to the discretion of the Judges who might interpret the Act as to be sure that they would read the description of the other class or classes eligible as excluding females. If it should be said that annexing the qualification of male to the one class is itself an argument of intention that it

should not be annexed to the other, I answer that it is no more so than the annexing of a qualification of 'full age' to the one class is an argument that the Legislature did not intend it to be annexed to the other, and yet the same 25th Section does annex it to the one and not to the other." That was the ground for the decision. Then the crowning point of this decision is that the Judge who gave the casting vote openly stated that he always agreed with the last person who had been speaking, and that he changed his mind with every different view that was expressed; and, unfortunately for the women in this case, the Judge who spoke before him had given the case against the women.

Lord Ashbourne: I don't think he said that; I really don't think he admitted anything of the kind.

Miss Macmillan. Well, perhaps he did not say so quite so strongly. He certainly did say there were still difficulties, and that he had changed his mind several times. I shall read his own words on page 480. Justice Christian: "I am not ashamed to say that I have changed my opinion more than once during the argument of this case, and since; and even yet consider it to be one of extreme difficulty, &c.." But the ground of his reversal of the decision does not affect our case. And taking the total of the Judges, we find that seven Judges were in favour of the right of women to vote under that section and only four against it, but the grounds on which those four founded their decision do not apply to our case. That, then, is what I have to say on the word "person." These instances I have been quoting are analogies. The main point that I make, however, is that the "person" in Section 27 is defined in Section 28. And, on page 26 of our case, I would point out, too, "that no Statute has been cited and no decision has been referred to in which the word 'person' has been construed as referring to males alone, and not including men and women alike. On the contrary, there are many instances which can be cited in which the word has been accepted as of common gender." Several instances I have cited to your Lordships. Then I submit that we are persons within the meaning of the 27th Section of the 1868 Act.

The further proposition I wish to uphold is that we are "not subject to any legal incapacity" within the meaning of that Act. "Not subject to any legal incapacity," as I pointed out before, is not defined in this Act. There is no Interpretation Clause showing what we are to understand by this expression "legal incapacity," and therefore it is necessary for us to see in what sense the expression has been used in other Statutes. The first Act I would cite is the Act of Union, 1707, Anne Parl. 1, Session 4, chap. 8. The Act is not divided into Sections. Not very far from the beginning of the Act, is a statement that

"in case of the death or legal incapacity of any of the said members"—now the words "legal incapacity" there, cannot possibly refer to any incapacity of sex, because whatever calamities may befall a member of Parliament, he is not liable to a change of sex. There are other Acts which use the term in the same sense, but it is not necessary to read them. Then, in the first great Reform Act, that is 1832 (2 Will. IV., chap. 45 Section 19), there the Suffrage was conferred on "every male person" subject to "no legal incapacity." Now, as the words "male person" are there used it is not possible that the expression "legal incapacity" could have any reference to sex. If there are no female persons to refer to, the expression "legal incapacity" cannot be referring to sex. There is the School Board Act, cited to your Lordships before, which gives the franchise to women in the same terms as the franchise is given to the Universities in this Act. It gives the franchise to "all persons of full age and subject to no legal incapacity." Then, women have always voted under that Act, so that there it is not possible that the expression could have any reference to women. Then, again, in the often-cited section of the 1881 Amending Act, sub-section 16 provides "that no person subject to any legal incapacity shall be entitled to vote at any Parliamentary election, or exercise any other privilege as a member of the General Council of any University." Now, the expression "subject to any legal incapacity" does not refer to women there, because under that proviso women have exercised all the privileges of members of the General Council. And, again, in the Isle of Man Act of 1881 giving the franchise, the same expression is used, "persons not subject to any legal incapacity," and that Act has always been taken to mean that women are enfranchised, although this expression "not subject to any legal incapacity" is used.

The Lord Chancellor: You have not given us the reference to the Isle of Man Act.

Miss Macmillan: Act of 1881, S. 5, vol. 5 of Statutes of I.O.M. page 95. As I have said before, there is no interpretation Clause in the Act, and we find that in every other Act in which this expression is used it does not refer to women. The conclusion therefore is that it does not refer to women here, because we have no other grounds to go on except the fact of how this expression has been used in other Acts when there is no explanation of what the meaning of the expression is in the Act with which we are dealing. It is true that in the case of Chorlton *v.* Lings, to which I have referred your Lordships before, it was held that women are subject to a legal incapacity from voting at the election of members of Parliament. It was also held that the word "man" in the Representation

of the People Act does not include "woman." It is obvious that these grounds of judgment are mutually destructive, for they are inconsistent with each other. If the word "man" does not include "woman" in that section of that Act, it is quite impossible that the expression "legal incapacity" could have any reference to women in that section of that Act. So, as the grounds there destroy each other, I submit that that decision is fallacious and does not apply. "Legal incapacity," I submit, is something which can apply both to men and to women. In all these Acts which I have cited it is shown that it applies either to men or to women. It cannot have any reference to sex, for if it fails to exclude women in so many cases, it is not possible that we can say that it excludes them here. In none of the cases that I have cited does it exclude, and there is no decision—barring the one I have referred to, and which is not founded on good grounds, there is no decision—which makes this expression "legal incapacity" refer to sex. But I would further maintain that to speak of "legal incapacity" at Common Law is an absurdity. The first reason on which the argument of the Respondents is founded (page 10 of their case) is: "Because women are by reason of their sex incapacitated from voting in the election of a member of Parliament." Now, I know that they are not arguing that we are excluded by statute. Here they mean that we are incapacitated at Common Law, and in the Condescendence I think they state so in so many words. Page 8 of the Appellants' case, Answer 2, explains "that by the Common Law of the land women are, in respect of their sex, incapacitated from voting in the election of a member of Parliament." So they are grounding this "legal incapacity" on Common Law. In the first place, Common Law does not apply to a new franchise, and in Section 56 of the 1868 Act it specially states that "all laws, customs, and enactments are to apply subject to the provisions of this Act." Common Law cannot apply to a newly created franchise. There never have been women graduates to whom the Common Law could apply in this case. There has been no woman graduate who either has voted or has not voted. There was no such franchise before 1868, and the Common Law quite as much excludes the male graduates as it excludes the female graduates; the Common Law is quite as much against them as it is against us in the case of a completely new franchise, especially as the enactments are self-contained. And, even if there were Common Law, statutes override it here; but that is not so much the point I wish to make at present, which is, that incapacity at Common Law is a contradiction, not exactly in terms, but it is a contradiction in sense, for if we are subject to legal incapacity at Common Law, that means we are having

taken away from us by the legal incapacity something which we already possess. Now, if the Respondents admit that we have this right to vote at Common Law, then it is possible to take away that right; but it is quite impossible to take away a right which does not exist. So that legal incapacity at Common Law is absurd, because incapacity—wherever that expression is used—does limit the individuals on whom the franchise has been conferred. It is possible to limit a right which exists; but it is not possible to limit a right which does not exist, and I understand that Common Law right cannot die. So that if they maintain that we have this Common Law right, which can be taken away by the legal incapacity, they are stating that this Common Law right has died, and that is an impossibility in the law of this country. It is possible to restrict a right by statute, but it is not possible to take away at Common Law what does not exist, so that I submit that the contention that we are excluded at Common Law is absurd. It contradicts a principle of the constitution, the principle that a Common Law right cannot die; it involves the assumption that that right has died.

Again, the Respondents state that "person" means "male person" within the meaning of this 27th Section of this Act, and they state that we are subject to a legal incapacity at Common Law, but as I pointed out in the case of Chorlton *v.* Lings, these two grounds of judgment are mutually destructive. If the word "person" there means "male person" alone, then it is nonsense to say that "subject to legal incapacity" refers to women: because "every male person who is not a woman," would be nonsense. Then in Section 27 we have the word "person" in contradistinction to the word "man" in the earlier sections of the statute. If the word is "man" in the earlier section, then obviously this word "person," which is a different word, means something wider, and our University Franchise is conferred on a wider body of people, men and women; but if it is conferred on this wider body of people by using the word "person," then it is equally nonsense to say that the word "person" is used in giving a wider franchise, and the expression "not subject to a legal incapacity" is to take away that newly given franchise. Parliament would not take away with the expression "subject to any legal incapacity" what it has given with the expression "person." So that because these grounds mutually destroy each other, and because of the absurdities which result from the assumption, I would say that here, too, it is impossible for "legal incapacity" to refer to women. That view is supported by what the Lord Ordinary says on page 7 of the Appendix. After saying that "person" does not include woman, he goes on to say: "An alternative view would be to construe the word

as of common gender, and to hold that as women were at Common Law legally incapacitated from exercising the Parliamentary franchise, their claim is excluded by the clause 'not subject to any legal incapacity,' which strikes at peers and aliens equally with women." That is not necessary. He agrees that these two grounds are mutually destructive; he makes them alternative; he admits that they cannot stand together, that it is not possible to say "person" means "male person" and at the same time "subject to any legal incapacity" refers to women. Then I submit that we are "persons" within the meaning of that section of that Act, that we are "not subject to any legal incapacity" within the meaning of that section of that Act, and that, being "persons not subject to any legal incapacity," and being on the Register, we are entitled to exercise that Parliamentary Franchise. We have fulfilled every condition laid down in this 27th Section of the 1868 Act, and it is those fulfilling those conditions who are entitled to vote in the election of members entitled to serve in any future Parliament in terms of this Act; so we are entitled to vote on these grounds.

It is to be remarked that in 1889 the Local Government (Scotland) Act, 52 & 53 Vict., chap. 50, Sec. 28, establishes two Registers—one for Parliamentary voters, and the other for voters in counties and boroughs; because it was intended that women were to vote in counties and boroughs, but that they were not to vote for Parliament. And that Act was passed in 1889, the year in which power was given to the Commissioners to admit women to graduation, and when, in the University Act, we should have expected the exclusion of women if they were not to exercise this franchise, or perhaps the establishment of a double Register if it had been considered necessary, and if it had been intended to exclude women. That they had their attention turned to the Register is evident from a study of the powers they give to the Commissioners, for they give the Commissioners power to make regulations to assist the Registrar in carrying out the duties imposed upon him by the 1868 Act, in the same 1889 Act which gives power to admit women to graduation, which involved our going on the General Council.

Section 14, Sub-section 13, of that Act, defines the power given to Commissioners "to frame regulations" for the Registrar, in connexion with the duties imposed by the 1868 Act. That is the 1868 Act of which we are speaking, so that it is idle to assert that the attention of the Legislature had not been turned to the difficulties that might possibly arise if they did not make a very explicit statement about the exclusion of women, if they were to be excluded. We were enabled to go on this Register and to graduate without any exclusion, and

that such an exclusion was reasonably to be expected may be inferred from the Act which enabled aliens to hold freehold property. That is the Act 7 & 8 Vic., chap. 66, Sec. 5. I am reading from an extract: "Be it enacted that every alien now residing in, or who shall hereafter come to reside in, the United Kingdom may take and hold any land, houses, &c., fully and effectually and with the same rights, remedies, exemptions, and privileges, except the right to vote at the election for Members of Parliament, as if he were a natural-born subject of the United Kingdom." But for that exclusion he would have been entitled to vote, because when he was given the right to acquire the qualifications for a vote, it was necessary to exclude him. But when we were given the power to acquire the necessary qualifications for a vote there was no corresponding exclusion, and we infer from that fact that we were not to be excluded.

Besides, there are two decisions favourable to women's right to vote. The case of Olive *v.* Ingram is reported in 7 Mod. Reports, page 263. That case decided that a woman may be chosen sexton, and may vote at the elections for sexton. In that case Chief Justice Lee says, p. 264, "By a collection of Hakewell's in the case of Catharine *v.* Surrey, the opinion of the judges, as he says, was that a *feme sole*, if she has a freehold, may vote for a member of Parliament, and by this it seems as if there was no disability." On page 265 Justice Page says: "I am of the same opinion, but I see no disability in a woman voting for a Parliament man." Then Justice Lee, on page 271, says: "In the case of Holt *v.* Lyle (4 Jac. I.) it is determined that a *feme sole* freeholder may claim a voice for a Parliament man, but if married her husband must vote for her." Mr. Justice Probyn, on the same page, says: "The case of Holt *v.* Lyle mentioned by my Lord Chief Justice is a very strong case. I submit that we have shown conclusively that we have the right to exercise this Parliamentary Franchise.

I will now deal with the arguments used by the Respondents against us. They quote a variety of cases, most of which do not directly bear on this question. I have already dealt at length with The Queen *v.* Crossthwaite, that is, the Irish case, and is distinctly in our favour. Another case referred to by the Respondents is the case of Beresford-Hope *v.* Lady Sandhurst, 1889, vol. xxiii. Q.B.D., page 79. The question was whether a woman might be elected to a County Council under the Local Government Act, 1888. It was decided that women may vote under this Act, but the grounds on which women were excluded from sitting do not apply here. Section 63 of the Act under construction provided that "for all purposes connected with and having reference to the right to vote at

municipal elections words in this act importing the masculine gender include women." The Judges founded their decision on the ground that this section 63 would be meaningless if women were to be eligible for election. But the case does not bear on our case. Then the case of Hall *v.* The Incorporated Society of Law Agents is mentioned in the Respondents' Case, page 9, 1901, 3 F., 1059. That was dealing with the Common Law rights. It decided that a woman could not become a law agent, and that the Court of Session had not any authority to admit her. The Common Law there was that men only had been law agents, but the case does not apply to the case of Parliamentary Elections. There is a further case cited by the Respondents, the Earl of Beauchamp *v.* Madresfield ; that is in Law Reports, 1872, 8 C.P., page 245. That case decided that a peer has not the right to vote at Parliamentary elections, and the grounds of the judgment were that peers were excluded by a resolution of the House of Commons. The judges said that in this particular case, which decided on the rights of voters, decisions of the House of Commons and of the Committee of Privileges of the House of Commons and resolutions of the House of Commons had a bearing on the question. They did not use these words, but the sense was that there was the force of statute in that matter. That was the ground of the exclusion. Peers are in a different position from women, because their right has been dealt with by a resolution of the House, and it was held that the resolution was a good ground for the Judges in that case to go upon, but it is not an authority here. The Marquis of Bristol *v.* Beck is another case cited. That is to be found in 23 T.L.R., page 224, 1907. That was a case which arose in connexion with the last General Election, where a peer of a University constituency claimed that he should have his vote counted. On page 225, 23 T.L.R., you will find that the Judge founded his decision on the previous decision in Earl Beauchamp. He specifically states that he is basing his decision on that : " The basis in that case was a resolution of the House of Commons." He refers to Earl Beauchamp's case. But, as your Lordships see, these cases have no bearing on ours. Then other cases are Chorlton *v.* Kessler and Wilson *v.* Town Clerk of Salford. These cases follow immediately on the case of Chorlton *v.* Lings in the same volume, 1868, L.R., 4 C.P. The case of Chorlton *v.* Kessler is on page 397, and it is exactly the same as Lings ; it is founded on that decision. The case of Wilson *v.* Town Clerk of Salford is also decided on the preceding cases ; it is on page 389. A woman appealed against the decision of the Revising Barrister that she should have her name inserted on the Register. It was held by the Judge that, as she was not a man, within the meaning of the Act which conferred

the right to vote, she was not a person who could appeal to have her right to be registered established. The word " person " is made expressly to depend upon the word " man," which had been interpreted in Chorlton *v.* Lings to mean " male person," and that was the ground of the decision in that case ; but it is no authority against us here. Again, the Oldham case is referred to on page 9 of the Respondents' Case, and is to be found in the first volume, O'Malley and Hardcastle, 151, at page 159. These are election petitions which arose after the passing of the 1867 Act ; but the decision in that case is that a woman was not a " man." But we are inserted under a different word—we are inserted in the word " person." The case of Stowe *v.* Jolliffe, which is reported 1874, L.R., 9 C.P., 734, was on the interpretation of a certain section of the Ballot Act. The Ballot Act is 35 & 36 Vic., chap. 33. That depends on a section of the Ballot Act, Section 7, which refers to the borough and county constituencies. The Ballot Act expressly states that the section has nothing to do with the Universities. There is only one section in the Ballot Act which has any reference to the Universities, and that is the section about personation. Section 31 of the Ballot Act says : " Nothing in this Act, except Part 3 thereof, shall apply to any Election to a University or combination of Universities." And Part 3 is the section which deals solely with personation ; so that that decision does not affect us, as it did not deal with the section of the Act which had anything to do with the University elections.

These are all the cases cited against us except the two cases of Chorlton *v.* Lings and Brown *v* Ingram. These are mentioned in the Respondents' Case, page 8. The references are 1868, L.R., 4 C.P., 374, and 1868, 7 M., 281. Both these cases arose out of the Franchise Acts (England and Scotland) passed in 1867–8 respectively. They deal with county and borough elections. In both it was decided that a woman could not be put upon a Voting Register. Both cases decided this same point. The women were applying to have their names put on Voting Registers, and the decision was that they had no such right. Now, these cases differ from our case in three main particulars. They were claiming the right to be put upon a Parliamentary Voting Register ; we are admittedly on a Parliamentary Voting Register, so that the decision in these cases does not apply to our case : we are legally registered on the Voting Register. The franchises dealt with in the case of Chorlton *v.* Lings and Brown *v.* Ingram were property franchises ; they were old franchises, our case is a new franchise. And the reasons which might be used against the old franchises do not apply in our case. Besides, in the special sections of the Act interpreted in Brown *v.* Ingram and Chorlton *v.* Lings it is the word " man " that is

being dealt with, and in our case it is the word "person"—the word "person" opposed to the word "man," which is discussed in Brown *v.* Ingram. They are different words; it is a new franchise instead of an old franchise; and they are only claiming the right to be put on the Register, whereas that right of ours is admitted and we are on the Register. These are the three main points of difference, and for these reasons these cases do not apply to us. I am not discussing the right or wrong of these particular cases, but merely pointing out that they are not applicable to our case, that they are not authorities for our case, they are entirely different in all the main aspects.

Broadly stated, the distinction between our arguments and the arguments of the Respondents is that we ask your Lordships to affirm that the statutes mean what they say, and the Respondents ask your Lordships to declare that, for a variety of reasons, the statutes do not mean what they say. They make certain assumptions, and they say, whether these assumptions produce absurdity in the Acts or not, these assumptions are to be held good in law. I submit that the whole intention of Acts of Parliament is that they are to mean what they say, and not to be excused for having said it. Our arguments involve no assumption; they are a strict interpretation of the Acts as they stand. Their arguments involve a great variety of assumptions, some of which produce ambiguity, and some of which produce fallacy and contradiction. If the argument is founded on fallacy, and not only on one fallacy but many fallacies, the explanation is that the Respondents have not been able to make their arguments without the fallacy. The first fallacy which appears is that they state that the ordinances which have been passed by the Commissioners, ordinances the Commissioners were authorized to pass, are not to have the effect of law. Now, any Act which is done following on an Act of Parliament, and which is legal, has as much force as the original Act itself. They do not say that these ordinances were outside the power of the University Commissioners under the Act; they merely say that because they are ordinances they are not to have the effect of law. In the Respondents' case, page 5, there is a paragraph which says: "The question at issue thus comes to be whether the admission of women to graduation in the Scottish Universities has had the effect of also conferring upon women graduates the right to exercise the University Franchise." Of course we do not assert that it conferred the right. We assert that it gave women the power to acquire the qualification: "The Respondents humbly submit that it has not had that effect. In the first place, it is to be observed that the Act of 1889, in empowering the Commissioners to make ordinances enabling each University to admit women to graduation, makes no reference whatever to the University franchise." But the Commissioners gave power to admit us to graduation, and as these ordinances are as good as statute Law, we do legally graduate, and we cannot graduate without going on the Parliamentary Voting Register. If the Commissioners had gone outside their powers, their ordinances would not have been good law; but they did what was expressly given them to do by the Act itself; they gave powers to others to admit women to graduation, and they did not exclude women. If they had intended that the graduation was not to carry with it the right to vote they should there have excluded them. But the Extra Division Court has stated that the Commissioners had no power. Page 11 of the Appendix says: "It may be observed that the Universities' Act, 1889, does not empower the University Commissioners to admit women graduates to the franchise." I cannot find the Section I intended to refer to, but there is a statement in the Extra Division which says that the Commissioners had no power. Here it is: "It is quite certain that the University Commissioners had no power to make any deliverance on this subject," and therefore they had no power to exclude or to include us. The power was in the hands of the Legislature when they made the 1889 Act, which gave the authority to the Commissioners to make the ordinances. This same fallacy is set forth in the Respondents' Case, where the implication is that Parliament have no power to delegate. "The argument of the Appellants is that Parliament has delegated to the Scottish University Courts a discretionary power to admit women to the exercise of the Parliamentary franchise." We submit Parliament has these powers, and that it has the power to delegate and it does delegate, and the ordinances carried out after this delegation have the force of a statute, just as any legal signature has legal force, and is as good in law as the Act from which it takes its power. Another fallacy on which they found their arguments is that we must not infer from the statute; that the statute must make an express statement. Statutes are necessarily abstract statements; it is not possible to set forth every particular instance that is meant to be covered by the Statute, but every inference which follows from the statute is as good as the statute itself, provided it does not contradict another inference from the statute. Besides, under the same Section 28 of the 1868 Act, among the members of the General Council are those on whom "any other degree which may hereafter be instituted" is conferred. Now, there was authority given to these Commissioners to make regulations to found new degrees, and among these new degrees was the degree of Bachelor of Music, and it has been inferred, because the degree is legally conferred, that the Bachelor of Music has the right to vote in

the election. And we submit that if we may infer it in the one case, we may infer it in the other case. It is the necessary result of our admittance to graduation; it is the graduation which carries with it this right to vote. They further state this in another form, when they say that there is no express enactment conferring the right to vote; but I would point out that in the Respondents' Case, page 7, it says: "No doubt the names of women graduates have, *de facto*, been placed on the General Council Registers, and such women graduates have been allowed without challenge to vote at General Council meetings on matters of university administration falling within the scope of the General Council; but this has been done without any express statutory authorization." So that they admit that we are on this Register, but that it is without any express statutory authorization. But the authorization is as express in the one case as in the other, and if it has been sufficiently express to overturn that custom it has been equally express to overturn any custom that may presumably exist with regard to voting. And, as I have said several times before, there is no express exclusion which is more to the point. I have quoted the Aliens' Act; but, to take another example, when the right was conferred on women to sit as mayors or chairmen of county councils, there was a special clause put in the Act depriving them of the right to act as magistrates. That is a general instance. It was thought necessary to put in that clause, otherwise it would have followed by inference that they would have had the right to sit upon the Magistrates' bench. And that Act was passed last year. Besides, in the case of Chorlton *v.* Lings, that is, a case on which they found, we have Justice Willis saying, on page 387: "It is not easy to conceive that the framer of that Act, when he used"—that is, Lord Brougham's Act, which said that words importing the masculine gender were to be taken to include females, unless the contrary was expressed. "It is not easy to conceive that the framer of that Act, when he used the word 'expressly,' meant to suggest that what is necessarily or properly implied by language is not expressed by such language." Very similar remarks are made by all the Justices. The Respondents found on that judgment, and they then turn round and say where "express" is to be referred to us in another connexion it is to mean something different. Now, I do not agree with the interpretation of Justice Willis in that case. But the point I wish to make is that this takes the foundation from the argument of the Respondents. They found on a judgment which states that "express" means "properly imply," and that makes the basis of their argument unsound. Another statement which the Respondents make is that because there were no women graduates in 1868, or because women could not become graduates in

1868, therefore women cannot become—no, they do not say that—they infer because we had not these qualifications in 1868, therefore because we have them now the qualifications are not to be qualifications. This is a confusion between the definition of "qualifications" and the particular individuals to whom qualifications apply. An Act of Parliament as long as it is unrepealed has as much force as it had the day it was enacted, especially if it is being put in practice every day, as this 1868 Act is. Some Acts, I understand, are re-enacted every year, but other Acts are enacted once and for all until repealed; and these Acts, which are enacted once and for all, have as much force as if they were re-enacted every year. It is merely to save the time of the Legislature that they are so enacted. So I submit that this Act of 1868 has as much force to-day as it had in 1868, and if the Legislature of the present day has found that by not repealing certain sections of that Act they are saying something which they do not intend, it is for them to bring in a repealing statute. If they do not wish women to have this vote at University elections, it is for them to bring in a statute saying that now that women are admitted to graduation this word "person" is not to mean person, it is to mean "male person." So far the Legislature has not done this. I understand it is a common occurrence to do such a thing when it is found out after decisions in your Lordships' House that the Acts are not as they intend them to be—it is not necessary to cite instances—but if the Act to-day means something different from what they intend it to mean, then they ought to bring in a repealing statute. Whenever we get this qualification under the 1868 Act, the 1868 Act applies to us. An Act does not fade and dwindle and die. This Act is used every year in the making up of Registers. It came to be applied to Bachelors of Music in the same way. All the arguments against us could be used against these Bachelors of Music. It could be said that because it was not possible for any man in 1868 to acquire the qualifications for a vote in a University Election by his musical ability, therefore in 1906, when he has the power to acquire these qualifications, these qualifications are not to carry with them the right which they would have carried if it had been possible in 1868 so to graduate. The point is that even if we could not then be put on the Register legally, we can now be legally on the Register. The Extra Division Court states that "the expression 'each voter' here used could not give rise to any ambiguity as to sex, because at this date the University Register was a register of men." Well, of course that is quite true; but we are asking your Lordships to give a decision now, when the conditions are quite different, and when we have the necessary qualifications, and when there are two sexes to consider, and not one. It merely happened

to be that there was no woman on the Register at that time. Besides, another point deserving mention here is that the 1868 Act does make special reference to the future. The words in Section 27, that is the conferring section are "every person whose name is for the time being on the Register." Of course that has reference to any time, and it shows that the Act is not referring only to the particular persons on the Register at that time. Then further down it says: "They shall be entitled to vote for a member in any future Parliament." There is another reference to the future. And then at the end of Section 28, it says that the right to go on the Register is conferred on any other person who holds "any other degree that may hereafter be instituted." Now all this points to the future, but that merely emphasizes the point that the Act does refer to the future. If these phrases had been all omitted the Act would have had just as much force; these additions make clear that the Legislature was thinking of the future on this matter.

Another argument brought forward by the Respondents is that the Legislature could not have contemplated what it was doing. They do not use the word "intend," because I understand there are many decisions of the Court which say that the intention of the Legislature is not what your Lordships consider here; it is what the Legislature has said that you consider in a Court of Law, and that the intention is the matter considered in Parliament. But if they are going to argue from intention, perhaps I may be permitted, too, to point out that during the discussion in the House of Commons over the corresponding Bill, the England (1867) Bill, an amendment was moved—

The Lord Chancellor: We never interpret Acts of Parliament in the light of the discussions which took place about them.

Miss Macmillan: So I understand; but in connexion with the argument of the Respondents upon the intention, I thought it rather applied; but the intention, I submit, should not be considered especially when the Act distinctly says something else. We are to presume that Parliament knows what it is doing, and that for our purposes it means what it says. If it does not mean what it says it ought to bring in a repealing statute. This was done in the Netherlands in the case of the first woman who graduated in Medicine. Graduation in Medicine in the Netherlands carries with it the right to vote, and the first lady who took the degree claimed that right but was not allowed to exercise it, so she took the case to the Court. For technical reasons the case was postponed, but during the postponement, the Legislature brought in a repealing enactment; and we submit that this is what the Legislature should do here.

But the fundamental fallacy on which the argument for the Respondents rests is the fallacy which begs the question. They say that Common Law is to be upheld whether it produces inconsistencies in the statutes or not, and they give the Common Law a variety of names. It is sometimes called Common Law, and it is sometimes called constitutional principle. On page 8 they state "That women are by the constitution of Parliament and the Common Law of the land disqualified by reason of their sex from the exercise of the Parliamentary franchise." I do not think that the constitution of Parliament can be added to the Common Law. The constitution of Parliament and the principle of the constitution of Parliament, as it is called elsewhere, are to be derived from the statutes and the Common Law taken together; and it is a begging of the question to derive the interpretation from the assumed constitution. If the constitution which is assumed is inconsistent with the statute or if the Common Law—I prefer to call them all Common Law, because I do not think from the particular way in which the matter is stated that anything else than Common Law is meant—so if the so-called Common Law is inconsistent with Statute Law, if it on one particular reading makes the Statute Law contradict itself, then it is the Common Law that is overridden and not the Statute Law, and in the decision of the Lord Ordinary this is brought out. He says, "Acts of Parliament, no doubt, constitute for the most part alterations on the Common Law, but when the language used is ambiguous, that construction will ordinarily be preferred which is consistent with the Common Law, rather than a construction which would over-ride it." I agree with that; but of course if the Common Law contradicts the statute or is inconsistent with the statute, the Common Law is over-ridden and not the Statute Law. And if the Common Law produces ambiguity, so in the same way the Common Law does not over-ride the statute, but the statute over-rides the Common Law. We contend that ambiguity has been introduced by the wrong assumption. There is no ambiguity in this statute; this statute is quite definite. Ambiguity has been introduced by this wrong assumption, and there follows on this wrong assumption, as the Lord Ordinary himself admits, a series of difficulties; he finds several difficulties which result from this wrong assumption of the Common Law. Our inference from the statutes makes the matter quite clear, and we submit that the statutes are definite and that they over-ride the Common Law. If there is Common Law against us—we do not admit that there is Common Law—but that question it does not seem necessary to consider, because the argument is quite complete without the argument of the Common Law. Even if there were Common Law against

all other franchises, the enactments on which we found are sufficiently express to over-ride that Common Law and to give the franchise to women graduates in the Scottish Universities. The other question is not necessary for our argument. In making the statement that Common Law must not lead to an absurdity, I quote Sir Edward Coke, who states that as one of the grounds on which Common Law is founded. He says that it must not lead to absurdities. That is Coke upon Littleton, Book 1, Chap. 1, Sec. 3 in a note. There are several absurdities produced by this wrong assumption of the Common Law. There is the assumption that the language is ambiguous, and they are driven to say both that we are legally on the Register; and we are not legally on the Register; and that the meaning of one section of the Act is that we are "persons not subject to a legal incapacity," and another section that we are "persons subject to a legal incapacity." But our view reduces all these difficulties to simplicity, and we submit that Common Law which makes the statutes plain is to be preferred to the Common Law which makes them contradict themselves, as Sir Edward Coke says. The principle which they uphold is—they call it the principle of the constitution of Parliament—they say that the Legislature should not in this particular way overthrow the principle. But the principle on which we found is more fundamental than any principle of the constitution of Parliament. Our principle is that the statutes must mean what they say, and that principle applies not only to the constitution of the Parliament of the United Kingdom, but it applies to every conceivable constitution. On the question of the Voting Papers, the Respondents do not meet our arguments, they merely make the Voting Paper question dependent on the other question, but they do not answer our arguments that we are prevented from going to the Statutory Court. That necessity is the main point in our argument with respect to the Voting Papers, and it does not seem possible that if a Court is established for a particular purpose, that Court is not to be used for that purpose. They can point to no statute which gives to the Registrar this function of deciding, and the custom and enactment which deals with Registers make the vote a necessary consequence of being on the Register. That, then, is how I meet the arguments of the Respondents, and I will now deal with the Judgments.

In the Appendix we have the opinion of Lord Salvesen the Lord Ordinary, delivered on July 5th, 1906. He says: "This case raises the important question whether women graduates are entitled to vote at the election of a member of Parliament for the Universities of St. Andrews and Edinburgh. The question is a new one, and the earliest opportunity has been taken of raising it, as the election which took place in 1906 was the first

contested election for these two Universities since women have been admitted to graduation. All the Pursuers are members of the General Council of the University of Edinburgh, and their names are duly entered in the Register of such members. The pursuers' claim is rested primarily on the Representation of the People (Scotland) Act, 1868 (31 & 32 Vic., c. 48). By Sec. 27 of that Act it is, *inter alia*, provided that "every person whose name is for the time being on the Register....of the General Council of such University shall, if of full age, and not subject to any legal incapacity, be entitled to vote in the election of a member to serve in any future Parliament for such University in terms of this Act.' The Pursuers' argument on this section may be stated thus: They say that "person" is a word which ordinarily includes all human beings without distinction of sex; that therefore the words "male" or "female" may be inserted after it in the section in question; and, if so, it would be meaningless to suggest that the clause "not subject to any legal incapacity" should be supposed to infer any incapacity on the ground of sex. They point to the fact that in Part I. of the Act where all the other franchises are dealt with, the word used instead of person is "man," that the difference of the phraseoolgy cannot be assumed to be accidental; but that, even if it were accidental or mistaken, effect must be given to the plain language of the Act. They further found on Section 2, Sub-section 3 of the Universities Election Amendment (Scotland) Act, 1881, which provides for the Registrar, in case of a poll, sending Voting Papers through the post to each voter to his address as entered on the Register of the General Council of the University, who shall appear from said address to be resident within the United Kingdom or the Channel Islands, and especially on the proviso in the last clause of Sub-section 16 which is to the following effect: "Provided always that no person, subject to any legal incapacity, shall be entitled to vote at any Parliamentary Election, or exercise any other privilege as a member of the General Council of any University." Women having now, by the Ordinance of 1892 following on the Universities (Scotland) Act, 1889, Sec. 14, Sub-section 6, been admitted to graduation, and the names of women graduates having been placed on the Register of the General Council, they contend with great force that the legal incapacity dealt with in the above proviso must be construed as excluding any incapacity on the ground of sex, otherwise they would be equally disqualified from exercising other privileges as members of the General Council—privileges to which they have been admitted without objection, and have regularly exercised. The whole of this argument depends for its validity on the construction which is put on the word 'person' in Sec. 27 of

the 1868 Act. I agree with the argument of the Pursuers, that in any ordinary statute this word would be presumed to include individuals of both sexes, but it is equally true that the word is open to construction; and if it sufficiently appears from the context, or on other grounds, that it must be construed as meaning male person, the case for the Pursuers entirely fails." We contend that the word is not open to construction; it is a definite word, and if we do not give the definite interpretation to it, we are landed in a number of absurdities. "Acts of Parliament, no doubt, constitute for the most part alterations on the Common Law; but when the language used is ambiguous that construction will ordinarily be preferred which is consistent with the Common Law, rather than a construction which would over-ride it." As I have pointed out before, the ambiguity is introduced by the assumption; it is not in the Act itself. The Common Law which is consistent with the Statute Law, we contend, is to be preferred to the Common Law which is inconsistent with the Statute. "Now in 1868 and 1881 women were legally incapacitated at Common Law from voting at the election of members of Parliament. That was decided in England in the case of Chorlton *v.* Lings, L.R. 4, C.P. 374, and in Scotland in the case of Brown *v.* Ingram, 7 M. 281." He deduces his judgment from these two cases, which we have contended do not apply here, and in his deduction he finds himself in difficulty. "That being so, it is scarcely conceivable that women should be entitled to vote at elections of a University member when they were to be debarred from the same privilege in County and Burgh elections." Of course all the sections dealing with Counties and Boroughs are different, and the word "man" is used in these sections. They are old franchises, and however inconceivable it may be, if the statutes say that we are to have the franchise we should have it. "It was said that they are expressly so debarred by the 1867 and 1868 Acts, which deal with the representation of the people in England and Scotland respectively, by the use of the word 'man' instead of 'person,' and that this does not apply to the University franchise." He omits to point out that the decision in these cases referred to the right of women to be put on the Register: we are on the Register. "The alteration in language is at first sight curious; but I think it may be explained on the footing that in 1868 and 1881 there were many women who had the necessary qualifications for the occupier and ownership franchise." This statement admits that the word "person" does include women, and if women had had the qualification at that date, it would have included them. "While at these dates women were not admitted to the University at all, and it was no doubt thought unnecessary to limit the University franchise expressly to males,

when males alone could, at that time, obtain the necessary qualification." Now at that time it so happened that males alone could obtain the necessary qualification; but in the same way Bachelors of Music at that time could not obtain the necessary qualification, but having obtained the necessary qualification, they have consequently acquired the right to vote. The end of the sentence is, "it was no doubt thought unnecessary to limit the University franchise expressly to males, when males alone could at that time obtain the necessary qualification." So now, we having obtained this necessary qualification, it IS necessary to limit the University Franchise if such is in the intention of the Legislature, but he definitely states that they do NOT limit the franchise to males. "Holding therefore that the word 'person' is open to construction, I feel constrained, for the reasons I have stated, to construe it as equivalent to 'male person.'" It is generally considered that in Acts of Parliament different words are to be taken to mean different things. In the case of the Guardians of Brighton *v.* The Strand Union, that is in 2 Q.B., p. 156, 1891, Lord Esher, the Master of the Rolls, says: "The question we have to determine depends entirely upon the construction of Sec. 36 of the Divided Parishes, 1876, Act, in construing which we must adhere to the ordinary rule of giving its clear grammatical construction to the language, a rule from which we have no right to depart unless there is something in the section which compels us to do so; a statute is not to be construed in the light of what the Court think the Legislature intended, and words must not be read in in order to enable it to do so. In the present case we find a change of expression in the Statute.... and which enables us not to add anything but to construe a word used in the Act and to extend its meaning." (See 1891, 2 Q.B., p. 166.) That is exactly what we wish your Lordships to decide. Continuing, Lord Esher says of expanding the meaning of words, "Now Sections 34 and 35 of the Act are made applicable to a 'person,' an expression which in Sec. 36 is altered to 'pauper,' and it is a rule where in the same Act of Parliament and in relation to the same subject-matter different words are used, the Court must see whether the Legislature has not made the alteration intentionally and with some definite purpose. *Prima facie* such an alteration would be considered intentional," Whether it is intentional or not, effect must be given to this change in this particular section of the statute which deals with the same subject-matter, the conferring of the franchise. "Holding therefore that the word 'person' is open to construction, I feel constrained, for the reasons I have stated, to construe it as equivalent to male person." That construction is exactly opposed to the decision of the judge in the case I have read.

" An alternative view would be to construe the word as of common gender." This means the Lord Ordinary is prejudging the question. He has made up his mind to decide against us. Here, his one ground is not consistent with his other ground, and he is driven to an ambiguous decision. Yet, he does not confine himself to either view, and we submit it is not necessary to take two views, when one is quite definite. " An alternative view would be to construe the word as of common gender, and to hold that, as women were at common law legally incapacitated from exercising the Parliamentary franchise, their claim is excluded by the clause ' not subject to any legal incapacity,' which strikes at peers and aliens equally with women." In speaking of " legal incapacity " I showed that in all other Acts it did not refer to women. I also showed it was impossible to have an incapacity at Common Law, because we cannot take away what does not exist. He refers to peers and aliens being excluded. There is a statutory exclusion of aliens in another Act which I have not read, that is 33 & 34 Vic., Chap. 14, Sec. 2, Sub-sec. 1. I am reading from an extract. " An Act to amend the law relating to the legal condition of aliens and British subjects, May 12th, 1870. 1. This Act may be stated for all purposes as the Naturalisation Act, 1870. 2. Real and personal property may be acquired and disposed of, &c.....Provided (i.) that this section shall not confer any right on an alien to hold real property situate outside the United Kingdom, and shall not qualify an alien for any office, or for any municipal, *Parliamentary* or other franchise. (ii.) That the section shall not entitle an alien to any right or privilege as a British subject, except such rights or privileges in respect of property as are hereby expressly given to him." I have already given reference to the Aliens' Freehold Act, in which right is given to an alien to hold freehold, but it is expressly stated that he shall not thereby have the right to exercise the Parliamentary franchise. " The construction of the proviso in Sub-section 16 of Sec. 2 of the 1881 Act is, I think, somewhat more difficult "—this is the second difficulty which arises from what we submit is a wrong assumption—" on the assumption that women graduates are legally entitled to be placed on the Register as members of the General Council "—there he is driven to contradict his statement on page 5, where he states that " their names are duly entered in the Register"—" on the assumption that women graduates are legally entitled to be placed on the Register as members of the General Council, and to exercise the privileges, other than the franchise, which belong to such members. It is enough, however, to say that that Sub-section conferred no franchise on members of the General Council "—we have not been submitting that it does—" and that it can

scarcely be used for the purpose of construing an Act of Parliament passed thirteen years before." Now, this 1881 Act is substituted for the repealed section of the 1868 Act, and the 1868 Act without it would give no instructions for the carrying on of an election. It is part of the 1868 Act, but even if it were not part of the 1868 Act it is not possible to contend that an Act loses force in the course of years, during which it is always being put in practise, except in so far as it is limited by other statutes or repealing sections. " Besides, it may be inferred here, as in the earlier Acts, that the Legislature had within its purview only male persons, as the doors of the Universities had not then been opened to women." But, as I pointed out to your Lordships before, it was a burning question of that day the question of women's education, and whether they should be admitted to Universities. In 1868 women were attending lectures given by the University professors, and an Association had been formed in Edinburgh to try to have the Universities opened to women. Proceedings in the Jex Blake case began in 1869. " I think, moreover, it is extravagant to assume that when Parliament in 1889 conferred powers on University Commissioners to make Ordinances " we do not assume—

The Lord Chancellor : Your point is, it is what the Act says ?

Miss Macmillan : Yes. It is not possible to know if I am making myself clear. " I think, moreover, it is extravagant to assume that when Parliament, in 1889, conferred powers on the University Commissioners to make ordinances ' to enable each University to admit women to graduation, in one or more faculties, and to provide for their instruction,' it was introducing so important a constitutional change as the extension of the franchise to women in University constituencies." Your Lordship has made a criticism on that which I intended to make. " What the Act of 1889 was dealing with was provision ' for the better administration and endowment of the Scotch Universities, and for improving and regulating the course of study therein,' and it was not an Act which had the remotest bearing on election law." We contend that it was under that Act that we were given the power to acquire the qualifications in the same way as the Bachelor of Music was given the power. " If the proviso on which the Pursuers found so strongly is to be interpreted literally, it might lead to the conclusion that women graduates ought not to be on the Register of the Council of the University at all." It is common ground that we are on that Register, and there is nothing we desire more than to have the statute interpreted literally. The statute says we must go on the Register. We are not allowed to graduate without going on the Register by that very same Section in which there is this proviso, to which the Lord Ordinary refers, " The only other matter

which was argued was that in any event the Pursuers were entitled, so long as they were on the Register of the General Council of the University of Edinburgh, to receive Voting Papers from the Registrar, and that the Registrar, in refusing to issue such papers to them, was in breach of his statutory duty. The short, and, to my mind, conclusive answer to this contention is that the Registrar is only bound to issue Voting Papers to persons who are qualified to vote. If he makes a mistake by refusing to issue the Voting Paper to such a person, he may render himself liable in a penalty ; but it would be neither good sense nor good law to hold that he should be compelled to issue Voting Papers to persons whose votes, when given, he would be compelled to reject." The Lord Ordinary there is quite under a misapprehension. You see he assumes that it is the Registrar who rejects the papers. That power is given to the Vice-Chancellor, and it is only on objection being taken that the Vice-Chancellor can reject the papers. " I am, therefore, of opinion that this separate ground of action also fails. I hope it may console the Pursuers for their want of success if I remind them that the legal incapacity of women to vote at Parliamentary elections did not, in the opinion of that very learned judge, Mr. J. Willes, ' arise from any underrating of the sex either in point of intellect or worth,' but was ' an exemption, founded on motives of decorum, and was a privilege of the sex (*honestatis privilegium*).' " I do not think even Mr. Justice Willes would suggest that it was not decorous to post a Voting Paper in a letter-box, " and, again, ' that the absence of such a right is referable to the fact that in this country in modern times, and chiefly out of respect to women, and a sense of decorum, they have been excused from taking any share in the department of public affairs.' " But your Lordships will note that the Act which confers a right on women to graduate involves their exercise of the public functions which are deputed to the General Council of the University. They vote for the Chancellor of the University and they vote for the Assessors who sit on the University Court. They hold meetings to decide various University matters, and perhaps I should also mention here that as students women vote for the Lord Rector of a University, and their right so to do has never been called in question. These are all public functions. The University decides the subjects of examination in all faculties ; it decides the standard of examinations for those who are to become barristers and lawyers, and who administrate the law of the country, and it decides the standard of examinations for doctors. " If this be so, I am afraid this action, if it has served no other purpose, has at least demonstrated that there are some members of the sex who do not value their common law privileges." On the grounds I have stated during the

reading of the judgment, I submit that it is not well founded in law.

The opinion of the Extra Division of the Court of Sessions runs on somewhat different lines. It founds, on what is called a general constitutional principle, that women are to be excluded from voting. I think your Lordships have my arguments on that general constitutional principle ; that it is a begging of the whole question ; that no general constitutional principle can remain a constitutional principle if it produces these inconsistencies in the Act. Lord M'Laren, who read the judgment, said : " Apart from the right to University representation which is now claimed, it is an incontestable fact that women never have enjoyed the Parliamentary franchise of the United Kingdom." There the Extra Division dates its common law and its " principle " from the establishment of the Parliamentary franchise of the United Kingdom 200 years ago. But, we submit that even if women did not vote all that time, that 200 years is too short a time in which to build up a Common Law. I read somewhere—I am sorry I have not the reference, but it may be familiar to your Lordships—that a Common Law which started at the time of the Revolution, *i.e.*, at the time of Oliver Cromwell, was much too young to rank as Common Law, that the custom must go back as far as memory, or as far as evidence before it could rank as Common Law. He goes on to say : " Prior to the Reform Acts of 1831 and 1832 there were many varieties of the Parliamentary franchise. The vote in counties was confined to freeholders." Well, with respect to these freeholders, certain particulars are set forth in Chorlton *v.* Lings with respect to their votes, p. 375. " The first franchise which dealt with the vote in counties is 7 Henry IV., chap. 15, which enacts that all they that be present at the county court, as well as suitors duly summoned for the same cause as others, shall attend to the election of knights for the parliament."

The Lord Chancellor : I do not want to interrupt, but the learned Judge is here speaking of the Act. They were freeholders.

Miss Macmillan : I was going to point out that this Statute enacts that all those present should attend to the election of knights for Parliament, and that the Court was attended by women as well as by men. I quote that from Chorlton *v.* Lings. Again, p. 376 refers to 52 Henry III., chap. 10, " which exempts among others from attendance at the tourne " which was one of the divisions of the county court, " viri religiosi et mulieres." In discussing these acts Justice Willes, who went into the detail of the history of the franchise, stated that women could not be suitors at a county court, but I think that does not appear to be the fact, because I have extracts

here from Rotuli Hundredorum, Vol. II., printed in 1818 by the Record Commission, and on p. 62, among several items, it states that "Lady Joan le Engles....does suit to the county and hundred." On the same page there are several other similar statements saying that women did suit to the county. Justice Willes, in Chorlton *v.* Lings, founded his decision on the fact that women had never done suits in counties. In Chorlton *v.* Lings it was decided that women were not only excused, but definitely excluded, that they had not the right to attend county courts. To show that women did require to attend at the county court before the passing of that Statute, I have here an extract from the Charter Roll, 37 Henry III. membrane 8 (6). This is a grant from the King to the Abbess and Nuns of Tarente exempting them from suits at the county courts. So it was evidently necessary before the passing of that Statute that women required to be exempted from attending at county courts. "By 7 Henry 4 s. 15 it was provided that the indenture should be under the seals of all them that did choose the Knights"—this was not carried out, the indenture being signed....

The Lord Chancellor: It is now time to rise. May I make this suggestion. If you can show in any document that women had the vote, then of course that would be a point in your favour. The old customs and rules of County Courts do not necessarily involve voting for members of Parliament.

Miss Macmillan: The grounds of decision of Justice Willes were that women were not present, because they were not suitors. But women as suitors were included among the voters who were "suitors duly summoned for the same cause as others shall attend for the election of knights for Parliament," but his ground for ruling them out was that the women did not attend, and the extract I was reading was to show that they had attended.

The Lord Chancellor: I wish rather to assist you in coming to what the point is. The point there was to show that the women were in the habit of voting. The point is not whether they were attending Court, but whether they voted.

Miss Macmillan: I have later instances.

Adjourned for Luncheon.

Miss Macmillan: I was dealing with the Judgment of the Extra Division on page 9 of the Appendix, and I was criticizing the first section, because from the statements there made is deduced the conclusion on which is founded the greater part of the Judgment. "In Scotland," he says, "the Borough members were elected by Town Councils." A great many

Borough members were elected by Town Councils, but I have evidence to show that this was not so in all Boroughs. In Peebles, for example, in the reign of William and Mary a writ for returning a member of Parliament said that those who were to vote were burgesses who were not papists—that was the only exclusion. Then the return shows that during the poll to prove that they were burgesses they had to show extracts from their burgess tickets. I can also show that women were burgesses in this same town, and that they took part in the business of the town by voting at elections in the town. He says further that "some of the English Boroughs had a representation as wide as that of the present law; in the greater number the franchise was more or less restricted, but not always in the same degree or on the same type. All varieties of the Parliamentary franchise had this element in common, that its exercise was confined to men"—he dates his statement of course from the foundation of the Parliament of the United Kingdom, which I submit is too recent a date on which to deduce what he does deduce—"and even in the cases where the right of election was confined to a few burgage tenures, or even to a single tenement, if the owner was a woman she was not entitled to vote." Before the union of the Parliaments women were entitled to vote in such elections, and I have here instances taken from a Blue Book issued by the House of Commons that such was the case. In a Blue Book entitled 'Parliamentary Writs and Returns,' printed by order of the House of Commons, 1878, on page 407 there is a return from the Borough of Aylesbury. The two members returned were Thomas Lichfield and George Burdon. In a foot-note to the Return it states that these members were returned by Dame Dorothy Packington. It does not give the form of her return, but I will read from the Return of this Dorothy Packington, who was the one voter, on page 50, 'Brady on Boroughs,' Appendix 23. This extract is from a document in a bundle of the Returns of the Parliamentary Writs in the 14th year of Queen Elizabeth, and it says: "To all Christian people to whom this present writing shall come. I Dame Dorothy Packington widow, late wife of Sir John Packington knight, Lord and owner of the town of Aylesbury sendeth greeting. Know ye me the said Dame Dorothy Packington to have chosen named and appointed my trusty and well beloved Thomas Lichfield and George Burdon Esquires, to be my burgesses of my said town of Aylesbury. And whatsoever the said Thomas and George Burgesses shall do in the service of the queen's highness in that present parliament to be holden at Westminster the eighth day of may next ensuing the date hereof. I the same Dame Dorothy Packington do ratify and approve to be my own act as fully and wholly as if I were or might be

present there. In witness whereof to these presents I have set my seal." It is made clear here that Dame Dorothy is the one voter in this constituency. Then the return is referred to in a Blue Book of the House of Commons so she did elect these members. Then it was in virtue of a writ sent to her that she did elect these members, so the House of Commons which sent the writ to her believed that she had the right to elect. In the same Blue Book there are reported other two returns by a Dame Copley for the Borough of Gatton. The one return is on page 391, that is in the year 1554. The entry in the Blue Book is "William Wootton, Gentleman, and Thomas Copley of the Inner Temple, Gentleman, returned November 11th, 1554, for Gatton Borough in Surrey," and the foot-note in the Blue Book sets forth the form of return (see note). She made a similar return in the following year, and again we have the entries of the names in these returns on page 394 of that Blue Book, and it is in much the same terms that she votes for these men : " Witnesseth that the said Dame Elyzabeth (Coppley of Gatton in the said county widowe) according to a writ to her in that behalf from the said shereve directed, hath on her free election nominated & chosen Humfrey Mosley gent, and Sir Harry Housie Knt, to be a burgess for the said borogh (signed) by me Elyzabeth Coppley." But not only are these returns there entered in that Blue Book, but there is a letter which is printed in a volume of Loseley MS. edited by Kempe, page 242, and that letter is in the following terms. This letter was written by Walsingham, then Secretary of State to Queen Elizabeth in the year 1586, and he is writing to two gentlemen, by name Sir William Meyer and Sir Thomas Brown.

Lord Ashbourne : What are you reading ?

Miss Macmillan : This is from a volume called 'Kempe's Loseley MS.' The MS. are a collection of various documents, but the letter is printed in this book. I have also the reference to the MS., but I have not myself seen the MS. I have taken the extract as correct in this Kemp's MS. The letter is from the Secretary of State, Walsingham, who says : "After my very hearty commendations, whereas my Lords of the Council "—that is the Privy Council—" do understand that Mrs. Copely hath the nomination of two burgesses for the town of Gatton, being a part of her jointure "—so here the Secretary of State assumes that this woman has the right to vote for members of Parliament, and the Lords of the Council are also acting on this belief. " It is not thought convenient for that she is known to be evil affected that she should bear any sway in the choice of the said burgesses." As you know there was then a good deal of working behind in connexion with the returning of

members, and often the Sheriffs gave not good returns, but the objection is not that she is a woman. 'It is not thought convenient for that she is known to be evil affected that she should bear any sway in the choice of the said burgesses "—not because she is a woman, but because she is evil affected. The writer then goes on to suggest the names of two suitable candidates. That was the opinion of the Secretary of State of the day on women's right to vote at Parliamentary elections. It was suggested in the case of Chorlton *v.* Lings that Dame Packington was a Returning Officer, but the return shows very clearly that she was acting for herself as a voter. And with respect to this letter from the Secretary of State it is of interest to notice in the same Blue Book that the Secretary of State was not successful in having the gentlemen he advocated returned as members. Two different members were there returned. It is apparent that at least in burgage tenures women had this right to vote at that time. They were not excluded from the right, and I have further instances of women who have been summoned to Parliament as abbesses and as peeresses. They are not of very modern date. Shall I read them ?

The Lord Chancellor : I may as well say this ; my own view is that one of the rules is that usage so far as knowledge and memory goes is taken as an instance of what is important. The fact of women not being allowed to vote in Parliament within living memory is a fact that would not be altered in this place by saying that some corner of an Act of Parliament might be interpreted to mean that some women did. However, I do not want to interrupt you.

Miss Macmillan : There is also an Act of the Scotch Parliament referring to the right of women to vote at elections. Page 78 of Skene's Scots Acts of Parliament. It is in the middle of an Act dealing with the right of the king to annex, the " annexation of the temporalty of benefices to the crown," and one section of that Act said : " Reservand always and exceptand to all archbishops, abbots, priors, prioresses....of the estate of prelates and which before had or has votes in Parliament." So you see prioresses are included as those who had or have votes in Parliament. The date of that Act is 1587.

Lord M'Laren does not say that he derives his principle from Chorlton *v.* Lings and Brown *v.* Ingram, but there are certain remarks in these decisions which have reference to our case. Though the decisions in the cases have no direct reference, some of the remarks in the cases have direct reference. The Respondents state on page 8 of their case " That women are by the Constitution of Parliament and the Common Law of the land disqualified by reason of their sex from the exercise of the Parliamentary franchise, and that this disqualification is not

to be held as removed by implication from the use of terms equally applicable to either sex in Statutes creating or regulating Parliamentary Franchises, has been matter of express decision in the Courts, both of England and Scotland. It was so held in the case of Chorlton *v.* Lings." Now Chorlton *v.* Lings did not hold that it could not be removed by implication; Chorlton *v.* Lings held that women were expressly excluded. Three of the judges in Chorlton *v.* Lings held that the exclusion was express. They call "expressly" and "implicitly" the same thing. There is another ground on which they founded their decision on page 391. There Justice Willes says: "Yet to use Mr. Butler's expression, the right must now be considered as extinct, or perhaps inasmuch as in our system there is no negative prescription against a law it may be more correct to SAY that the right never existed." That statement is inconsistent in itself, for first he admits that the right has existed, then he says it is better to *say* that it never did exist. And he definitely in that statement says there is no such thing as "negative prescription." With respect to the decision in Brown *v.* Ingram, I stated above three points of difference between that case and ours, namely, that there women are not on the Register, that it is an old franchise and different words are used. Their right to be registered was there denied because of a custom against inserting women's names on that Register. That is the ground of the Judgment in that case. In our case, however, the custom in so far as the entering of names on the Register is concerned, has been over-ridden. Then after those historical statements Lord M'Laren says: "In view of these facts we must conclude that it was a principle of the unwritten Constitutional law of the country that men only were entitled to take part in the election of representatives to Parliament." His deduction, however, I submit is unsound; but whether it is unsound or not, the Judgment that follows this is unsound. It does not matter whether there was an unwritten Constitutional law of the country at that time, or not. Even if there were such a law, the Acts as they stand have overturned it, and that part of the argument really does not affect us. I introduced it merely as an answer to this section of this decision. Lord M'Laren goes on to say: "All ambiguous expressions in modern Acts of Parliament must be construed in the light of this general Constitutional principle"—your Lordships have my argument on that point. "We are not to be understood as invoking any merely technical rule of construction in this matter; what is meant is that if Parliament had intended to subvert an existing Constitutional law in favour of women graduates, the intention would naturally be expressed in plain language, and therefore if ambiguous language is used it must be construed in

accordance with the general Constitutional rule." I have shown that the ambiguity is introduced by the assumption; it is not in the Statute itself. "By Section 27 of the Representation of the People (Scotland) Act, 1868, a vote for the election of a University member is given to 'every person whose name is for the time being on the Register....if of full age and not subject to any legal incapacity.' The qualification of 'full age' was necessary, because the Register of graduates might contain the names of men who had taken their Degrees before attaining majority. The qualification 'not subject to any legal incapacity' was also necessary; a peer, for example, might be on the Register of graduates, but it was not intended that he should have a vote for returning a member to the House of Commons. It was not necessary to exclude women by express words, because at that time women could not lawfully be on the University Register." Well, as Lord Salvesen has also admitted in his decision, the implication is it is now necessary, and that is exactly what we hold, it IS now necessary if we are to be excluded. The inference there is that we were not excluded; he admits that we were not excluded. "Now this is the Act of Parliament which created the University constituencies of Scotland, and therefore in its inception the University franchise had this element in common with the franchise of Counties and Burghs, that it was confined to men." He there assumes that it was confined to men. At that time the conditions were only that women could not acquire the qualification. "It may here be observed that in the third, fourth, fifth, and sixth Sections of this Act, which define the qualifications of voters in Counties and Burghs, the words used are 'every man,' so it appears that the expression 'every person,' which is used with reference to University elections had the same meaning as 'every man' in the earlier sections." That I understand is contrary to many legal decisions and to the ones to which I have referred your Lordships. "By the Universities elections Amendment (Scotland) Act, 1881, provision is made for taking the vote at University elections by means of 'voting-papers,' and in particular by Sec. 2, Sub-sec. 3, the Registrar in case of a poll is required to send through the post a voting paper 'to each voter to his address as entered on the Register of the General Council of the University, who shall appear from said address to be resident within the United Kingdom or the Channel Islands." The title of the Act refers to "registration of voters" and has been applied to us, and we cannot graduate without being so registered. "The expression 'each voter' here used could not give rise to any ambiguity as to sex, because at this date the University Register was a Register of men" —that is the same as the statement above. "The proviso of

Sub-sec. 16, excluding persons 'subject to any legal incapacity' does not seem to have any material bearing on the present question." There you will see that his notion of that Sub-section differs from that of the Lord Ordinary. We maintain that as that proviso is in the Section which compels us to be registered, it has a material bearing. "The claim of the Pursuers to vote at the election of a member for the Universities of Edinburgh and St. Andrews is founded on their status as graduates of one of these Universities. By the Universities (Scotland) Act, 1889, the Commissioners thereby appointed were empowered to make Ordinances 'to enable each University to admit women to graduation in one or more faculties.' By the Ordinance of 1892 this power was exercised, and women have been admitted to graduation in certain faculties. The Pursuers' names have been placed on the Registers of the General Council of one of these Universities in right of their respective degrees. It may be observed that the Universities Act, 1889, does not empower the University commissioners to admit women graduates to the franchise; and if it had been intended that the degree should carry with it the right of voting at Parliamentary elections, we should have expected to find a provision to that effect in the Act of Parliament itself." You see, he states we are rightly on the Register, and the statement does not seem to be consistent. There is the very provision in the 1868 Act which gives the franchise to "persons" and to those having degrees, and we should rather have expected exclusion. "It is quite certain that the University commissioners had no power to make any deliverance on this subject"—we agree with that statement—"and the same observation applies to the powers of the University Courts in the execution of the Ordinance. The Pursuers' claim accordingly must rest on the Representation Act of 1868 and the Universities Elections Act, 1881." Also, we submit the University Act which lays down the regulations for graduation. "The argument must be that a franchise originally conferred on graduates who were necessarily men, has been extended to women graduates, not by a direct enfranchising enactment, but by the indirect effect of an Act of Parliament, which does not profess to deal with political privileges," this implies that we have got our right to the franchise by inference from the Statutes in question—"but is concerned only with academic functions, and which in the interests of the higher education of women, authorizes the admission of women to graduation. The degree itself, or rather the right to take a degree, is not even conferred by the Act of Parliament, but is made dependent, first on the judgment of commissioners empowered to take evidence, and secondly, on the pleasure of the governing bodies of the respective Universities." My argument on this point

is that all legal Acts are as legal as the Statute which authorizes them. "It is difficult to conceive that the Legislature should have conferred by devolution the power of extending the franchise to a class of persons hitherto excluded by a Constitutional rule." However difficult it is to conceive we have the fact before us, we have the fact that it has been done, and we have the same difficulty with respect to the Bachelor of Music—"a power which it has always kept in its own hands, and it appears to us that there is absolutely no evidence in the terms of the Universities Act, 1889, that Parliament intended to extend the franchise to women or had any question of political privileges in view, when it empowered the Universitity authorities to admit women to graduation. We think that the Representation Act, 1868, and the Universities Elections Act, 1881, must be construed now, as heretofore, with reference to the political disabilities of women, and that the circumstance of the Pursuers being on the University Registers does not remove the disability. The pursuers contend that in any event they are entitled to receive Voting Papers, leaving it to the candidate or his agent to object to the vote if tendered, and to the Vice-Chancellor or his deputy to dispose of the objection, all in terms of the 10th Sub-section of Section 2 of the Universities Elections Act, 1881. It is, no doubt, true that if the Registrar (taking a different view of his statutory duty) had sent the lady graduates voting papers, the votes might have been objected to and disallowed by the Vice-Chancellor." We submit that the Registrar's duty is definite, and that he cannot take several views of a Statutory duty. "But as our judgment on the main question is adverse to the claim of the lady graduates, it follows that no individual of the class has a cause of action for not receiving an invitation to give a vote which she could not lawfully exercise, or a title to sue for a declaratory finding that she is entitled to receive such a paper. We are therefore of opinion that the Lord Ordinary's judgment should be affirmed, and the Reclaiming Note refused." That is our case. It has not been easy to know if I have been making myself clear, as you have so kindly let me go on without asking questions. But if I have failed to make myself clear on any points I should like to be told before I sit down.

The Lord Chancellor: I think we quite clearly understand your contention.

Miss Simson: My lord, I do not think it is necessary for me to add much to what my friend Miss Macmillan has said, and I shall say only a few words bringing under your notice some general considerations which bear on the case. The judgment given in the Extra Division, as Miss Macmillan has said, rests altogether on the assumption that the custom prevailing of women not voting for members of Parliament is

a constitutional principle, but I submit that a custom of this kind cannot rank as a constitutional principle. It is easy to understand how such a custom arose. It arose when social conditions were very different from those which prevail now. The franchise at that time was looked upon as a burden and not as a privilege. The journeys to the places where elections were held involved expense and fatigue, and in later times the polling-places were scenes of riot and rowdyism, which it was not advisable women should be present at. Most of these reasons have passed away, but the custom remains. What I hold is that a custom, the reasons for which have passed to a great extent away, ought not to take the rank of a constitutional principle, which surely should have some permanent basis underlying it. We claim further that this custom has no bearing on the Universities' franchise, which franchise is of recent statutory creation, and is utterly different from the other and more ancient franchises. There is no precedent as to women graduates not voting, for we have taken the very earliest opportunity of bringing forward this our claim, nor has there been time for any custom to spring up, except the custom that graduates vote. Men graduates vote not as being men, but as being graduates. We women graduates have the identical qualifications in virtue of which these men vote, and we hold that the right to vote should be ours also. Contending that no constitutional principle bars the way, we base our claim altogether on the Statute Law, on the three Statutes taken together, those of 1868, 1881, and 1889. There are two stages to be considered. The Acts of 1868 and 1881 give the franchise to graduates; the Act of 1889 makes it possible for women to become graduates. We quite agree with what is said in the judgment given in the Extra Division, "It may be observed that the Universities' Act, 1889, does not empower the University Commissioners to admit women graduates to the franchise"—no, it does not; but it empowers them to admit women to graduation, "and if it had been intended that the degree should carry with it the right of voting at Parliamentary elections, we should have expected to find a provision to that effect in the Act of Parliament itself." We do have a provision to that effect in the Act of 1868, and under it graduates have the franchise given to them expressly. The Aliens' Act requires to have an express provision attached to it in order to take away from aliens who have the right to hold freehold property, the right which usually accompanies that, of voting at Parliamentary elections. The Universities' Franchise Act has no such provision. The Universities were empowered to give the degree unconditionally; they did give the degree unconditionally; and we submit that it is now too late to say that it was not intended to be given unconditionally. Then there

is another objection which is urged against our plain and straightforward reading of the Statutes. Miss Macmillan also touched on that. It is that the object in admitting women to graduation was an educational object, and had no reference to electoral law. But, taking the case of the Bachelor of Music or of an Agricultural Science degree, it may be argued in the same way that there certain definite objects were primarily in view in conferring the degree: in the one case that musical education might be improved in the country, and in the other case that scientific agriculture might be promoted. But in both those cases, men who hold the degree have the unquestioned right to exercise this University franchise as graduates. Why should women as graduates not have the same right? It has been further urged that in 1868 there were only men graduates, and therefore the Statute can apply only to them, as they only could be the persons referred to. I may say in passing that this involved an admission that if there had been women graduates in 1868 they would have been included among those who have the right to the franchise. Of course it is obvious that so long as there happen to be men graduates only, any allusions to "persons" in the Statute must mean men; but it is equally obvious that as soon as women graduates came into existence, they also were included in that category. Take the example of a company where the shareholders when the company was formed were men only; they attended the company meetings and voted as shareholders. But suppose that women afterwards became shareholders, would they not have an equal right to attend the company meetings and give their votes? It would be absurd to deny this on the ground that at the time the company was formed only men were shareholders. I would submit also that if those who were responsible for framing the Statute left out of consideration altogether the possibility of women becoming admitted to the Universities and having the franchise conferred upon them, they were singularly indifferent to the trend of public opinion at the time, for there were at that date in 1868 two matters which were coming largely under public attention, one of these was the conferring of the franchise on women, and the other was the admission of women to the Universities. It was in 1867 that John Stuart Mill brought forward his famous amendment, and the matter was much discussed in Parliament and out of it. As to the public opinion regarding the admission of women....

The Lord Chancellor: I must remind you that we are a judicial body, and what we have to discuss is the Act of Parliament and the real interpretation of the law, and I am afraid that cannot be affected by what public opinion was at the time the Act was passed.

Miss Simson: I go on to say that it is scarcely conceivable when the change was made from "man" to "person" in the 1868 Act that it was under the conviction that only men could then and in the future become graduates. It is much more conceivable that the change was made recognizing the possibility that women might at no distant date be included. I think I need say nothing more. Our contention is that a plain, straightforward reading of the Statute in question confers upon us the franchise, and that the Common Law, a custom which grew up under social conditions which are very different from those which now prevail, is no bar to our availing ourselves of the provisions of the Statute law.

The Lord Chancellor: We will let the Respondents know if we desire to hear any answer to the arguments of the other side.

Mr. Dickson: If your Lordships please.

DECEMBER 10th.—JUDGMENT.

The Lord Chancellor said: This appeal has been argued temperately, with the evident knowledge that your Lordships have to decide what the law in fact is, and nothing beyond that simple question. Two points were raised by the appellants. The first and main point was that they were entitled to vote at an election of a member to serve in Parliament for the Universities of St. Andrews and Edinburgh. The second was that at all events they were entitled to receive voting papers, and on tendering their votes to have their claim decided by the authority set up under the Universities' Elections Amendment (Scotland) Act, 1881. I will take these contentions in order. In regard to the alleged right of voting, the appellants assert that if ancient records are explored there is evidence of women having enjoyed this right, and no adequate ground for affirming a constitutional or common law disability on the score of sex. And, further, that the Representation of the People Act (Scotland), 1868, taken with the Universities' (Scotland) Act, 1889, and the ordinances made under the last-mentioned Act do upon their literal construction confer upon women, if they comply with the requirements, a right to vote for university members. Now, my Lords, it may be that in the vast mass of venerable documents buried in our public repositories—some of authority, others of none—there will be found traces of women having taken some part in Parliamentary elections. No authentic and plain case of a woman giving a vote was brought before your Lordships. But students of history know that at various periods members of the House of Commons were summoned in a very irregular way,

and it is quite possible that, just as great men in a locality were required to nominate members, so also women in a like position may have been called upon to do the same, or other anomalies may have been overlooked in a confused time. I say it may be so, though it has not been established. A few equivocal cases were referred to—I was surprised how few—and it is the same in regard to judicial precedents. Two passages may be found in which judges are reported as saying that women may vote at Parliamentary elections. These are dicta derived from an ancient manuscript of no weight. Old authorities are almost silent on the subject, except that Lord Coke at one place incidentally alludes to women as being under a disqualification, not dwelling upon it as upon a thing disputable, but alluding to it for the purpose of illustration as a matter certain. This disability of women has been taken for granted. It is incomprehensible to me that any one acquainted with our laws or the methods by which they are ascertained can think, if indeed any one does think, there is room for argument on such a point. It is notorious that this voting has, in fact, been confined to men. Not only has it been the constant tradition alike of all the three kingdoms, but it has also been the constant practice, so far as we have knowledge of what has happened, from the earliest times down to this day. Only the clearest proof that a different state of things prevailed in ancient times could be entertained by a court of law in probing the origin of so inveterate a usage. I need not remind your Lordships that numberless rights rest upon a similar basis. Indeed, the whole body of the common law has no other foundation. I will not linger upon this subject, which indeed was fully discussed in Chorlton *v.* Lings. If this legal disability is to be removed it must be done by Act of Parliament.

Accordingly the appellants maintain that it has, in fact, been done by Act of Parliament. They say that the Act of 1868, while confining to men the Franchise described in other sections, adopts different language in Section 27, using in that section the word "persons." I agree that the word "persons" would, prima facie, include women. But in speaking of "persons" this same section limits them to those who are "not subject to any legal incapacity." I cannot doubt that by this limitation, if not otherwise, are excluded all such persons as may by law be disabled from voting. Peers are excluded, as are women. So also are others. If the word "persons" in Section 27 of the Act of 1868 is wide enough to comprise women, then they are shut out by the exception of those subject to a legal incapacity. If the word "persons" is not wide enough to include women then there is nothing in any Act of Parliament that gives the smallest foothold for the appellants' contention. I will only

add this much as to the whole case of the appellants. It proceeds upon the supposition that the word "persons" in the Act of 1868 did include women, though not then giving them the vote, so that at some later date an Act purporting to deal only with education might enable Commissioners to admit them to the degree, and thereby also indirectly confer upon them the Franchise. It would require a convincing demonstration to satisfy me that Parliament intended to effect a constitutional change so momentous and far-reaching by so furtive a process. It is a dangerous assumption to suppose that the Legislature foresees every possible result that may ensue from the unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out from various Acts this and that expression, and, skilfully piecing them together, lay a safe foundation for some remote inference. Your Lordships are aware that from early times courts of law have been continuously obliged in endeavouring loyally to carry out the intentions of Parliament to observe a series of familiar precautions for interpreting statutes so imperfect and obscure as they often are. Learned volumes have been written on this single subject. It is not, in my opinion, necessary in the present case to apply any of those canons of construction. The Act invoked by the appellants is plain enough to repel their contentions. In regard to the second point made by the appellants—namely, that they are entitled to receive voting papers—in my opinion they are not so entitled, because the Act only says that voters shall receive them. They are not voters. For these reasons I respectfully advise your Lordships to dismiss this appeal with costs.

LORD ASHBOURNE.

Lord Ashbourne said: The claim of the appellants is founded on their status as graduates of one of the two universities named. By the Universities' (Scotland) Act, 1889, the Commissioners thereby appointed were empowered to make ordinances "to enable each university to admit women to graduation in one or more faculties," and to provide for their instruction. By the Ordinance of 1892 this power was exercised, and it was declared "to be in the power of the university court of each university to admit women to graduation in such faculty or faculties as the Court shall think fit." The first thing which at once attracts attention is that neither the Act nor the Ordinance gives the slightest hint that the Franchise was at all in contemplation, and there is no allusion to the register of the General Council. The appellants, therefore, must look elsewhere for support to their claim, and they accordingly in their careful arguments rely on the Representation Act of 1868 and the Universities'

Elections Act of 1881. By Section 27 of the Representation Act of 1868 a vote is given to "every person whose name is for the time being on the register if of full age, and not subject to any legal incapacity," and the appellants claim that they come within the description—that they are persons whose names are on the register. The case turns mainly on the meaning of the word "person" in that Act. It is an ambiguous word, and must be examined and construed in the light of surrounding circumstances and constitutional principle and practice. Holding the views I do, it is not necessary that I should discuss the words "legal incapacity." In 1868 the Legislature could only have had male persons in contemplation, as women could not then be graduates, and also because the Parliamentary Franchise was by constitutional principle and practice confined to men. The appellants strongly relied on the use of the word "man" in earlier sections dealing with counties or boroughs. It is, however, to be noted that in six later sections before the 27th the word "person" is used instead of "man," and must mean "male person," and I cannot hold that the same word "person" in Section 27 could have a different meaning, even if I could ignore other arguments. I can give but little weight to the few old cases referred to, which are obscure and unexplained, and which are opposed to uninterrupted usage to the contrary for several centuries. I can then entertain no doubt that when examined "person" means male person in the Act. The Parliamentary Franchise has always been confined to men, and the word "person" cannot by any reasonable construction be held to be prophetically used to support an argument founded on a statute passed many years later. If it was intended to make a vast constitutional change in favour of women graduates, one would expect to find plain language and express statement. So far from the Act giving any intimation of a serious innovation, it guards in a saving clause, subject to the provisions of the Act, all existing "laws, customs, and enactments." But here the Act of 1889 and the ordinance are absolutely silent on the subject, and only refer to graduation and academic arrangements. The Act of Parliament itself does not confer the right of graduation, and only delegates that authority to commissioners who did not directly exercise the power, but ordained that it should be in the power of each university court "to admit women to graduation in such faculty or faculties as the said court may think fit," and directed how academic functions are to be provided for. It is to my mind impossible to imagine that the legislature should have conferred by a delegation to commissioners the power either of extending the Franchise themselves to a perfectly new class, or by devolution passing on that power to university courts—a power always jealously kept in its own hands. It is incon-

ceivable that Parliament should do this by implication without a word to indicate the intention, and should thus indirectly place a new construction on an Act passed years before, and reverse a settled and uniform constitutional practice and principle. Having reached this conclusion, I must hold that there is no substance in the argument that the appellants were entitled to be sent voting papers. It is true that voting papers should be sent to voters, but if they were not voters where was the right and where was the damage? In my opinion the judgments of the Lord Ordinary and of the Lords of the Extra Division were quite correct, and this appeal should be dismissed with costs.

LORD ROBERTSON.

Lord Robertson said: The central fact in the present appeal is that from time immemorial men only have voted in Parliamentary elections. What the appeal seeks to establish is that in the single case of the Scottish universities Parliament has departed from this distinction, and has conferred the Franchise on women. Clear expression of this intention must be found before it is inferred that so exceptional a privilege has been granted. We had not the assistance of counsel, but fortunately the question is not difficult. In truth the case of the appellants rests on a very narrow and slender basis, and that is the word "person" in the first and second Sub-sections of Section 28 of the Representation of the People (Scotland) Act, 1868. It is said that while in the clauses relating to counties and burghs the persons enfranchised are described as "male persons," the neutral term "person" is used in describing the university elector, and the suggested inference is that this was done deliberately so as to admit women. I am afraid, however, that a much more superficial reason was what led to the variation. If we turn to the Universities' (Scotland) Act, 1858, which set up the university councils (the bodies which constitute the constituencies), we find that the word used is "person." Now this is exactly what Parliament would naturally do. Minded to give votes to the members of the general councils, it turns to the description of them in the Act which established those councils, and adopts the term there used. This is the genesis of the enfranchising section. What is its effect? Now the "persons" so described were, in fact, solely men, for in 1858 and in 1868 the universities did not receive women as students, and did not confer on them degrees. It is obvious, therefore, that the persons contemplated in the enfranchisement of the Scotch graduates were men. As the case of the appellants is entirely one of words it may be added that in 1858, as in 1868, the avail of the words "male persons" as distinguished from

"persons" had been greatly reduced by Lord Brougham's Act, so that the choice of the word "person" had of itself the smaller significance in the direction of including women. The one expression, like the other, needs to be read in the light of the subject matter. The case of the appellants has, as I have said, the word "person" (in the Act of 1868) for its basis, but it is necessary to remember that it is only by virtue of an ordinance of the University Commissioners under an Act of 1889 (dealing purely with academic as distinguished from political matters) that women were made eligible for graduation, and thus were introduced into the university councils. Now it must be allowed that if Parliament has by this means conferred the Franchise on women it has taken the most roundabout way to do it. Whichever view be taken of the merits of the question whether women should vote for members of Parliament, it is at least a grave and important question for Parliament to decide. This question, according to the theory of this appeal, Parliament devolved on a Royal Commission about the details of academic affairs, which had power moreover to provide graduation (and, by consequence, the Franchise) for women in one university or in all, according to its absolute discretion. It is difficult to ascribe such proceedings to Parliament and at the same time retain the conventional respect for our Legislature. I have only to add that if I have not in this judgment relied on the words about legal incapacity, it is not that I do not consider the argument on them to be legitimate. But I prefer broader grounds, and I think that a judgment is wholesome and of good example which puts forward subject matter and fundamental constitutional law as guides of construction never to be neglected in favour of verbal possibilities.

Lord Collins concurred, and the appeal was dismissed with costs.

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Old Fogeys
and
Old Bogeys

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