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A BRIEF SUMMARY,

IN PLAIN LANGUAGE,

OF

THE MOST IMPORTANT

LAWS CONCERNING WOMEN;

TOGETHER WITH

A FEW OBSERVATIONS THEREON.

*By Barbara Leigh Smith*  
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# LAW S CONCERNING WOMEN.

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## LEGAL CONDITION OF UNMARRIED WOMEN OR SPINSTERS.

A SINGLE woman has the same rights to property, to protection from the law, and has to pay the same taxes to the State, as a man.

A single woman.

Yet a woman of the age of twenty-one, having the requisite property qualifications, cannot vote in elections for members of Parliament.

No political franchise.

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

Has a parochial vote.

If her father or mother die *intestate* (*i. e.*, without a will) she takes an equal share with her brothers and sisters of the personal property (*i. e.*, goods, chattels, moveables), but her eldest brother, if she have one, and his children, even daughters, will take the *real* property (*i. e.*, not personal property, but all other, as land, &c.), as the heir-at-law; males and their issue being preferred to females; if, however, she have sisters only, then all the sisters take the real property equally. If she be an only child, she is entitled to all the *intestate* real and personal property.

Heiress.

The church and nearly all offices under government are closed to women. The Post-office affords some little employment to them; but there is no important office which they can hold, with the single exception of that of Sovereign.

No public employments.

The professions of law and medicine,\* whether or not closed by law, are closed in fact. They may engage in trade, and may occupy inferior situations, such as matron of a charity, sextoness of a church, and a few parochial offices are open to them. Women are occasionally governors

\* Elizabeth Blackwell, M.D., received her diploma in America before she walked St. Bartholomew's Hospital in London.

of prisons for women, overseers of the poor, and parish clerks. A woman may be ranger of a park; a woman can take part in the government of a great empire by buying East India Stock.

Domestic  
servant.

A servant and a master or mistress are bound by a verbal or written agreement. If no special agreement is made, a servant is held by the common custom of the realm to be hired from year to year, and the engagement cannot be put an end to without a month's notice on either side.

Seduction.

If a woman is seduced, she has no remedy against the seducer; nor has her father, excepting as he is considered in law as being her master and she his servant, and the seducer as having deprived him of her services. Very slight service is deemed sufficient in law, but evidence of some service is absolutely necessary, whether the daughter be of full age or under age.

These are the only special laws concerning single women: the law speaks of men only, but women are affected by all the laws and incur the same responsibilities in all their contracts and doings as men.

## LAWS CONCERNING MARRIED WOMEN.

Marriage.

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

Prohibitions.

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

A lunatic or idiot cannot lawfully contract a marriage, but insanity after marriage does not make the marriage null and void.

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

The consent of the father or guardians is necessary to the marriage of an *infant* (*i. e.*, a person under twenty-one), unless the marriage takes place by banns. The consent of the mother is not necessary if there be a father or a guardian appointed by him.

A second marriage while a husband or wife is living is felony, and punishable by transportation. Bigamy.

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

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

The object of the Act\* for authorizing civil marriages was to relieve Dissenters and those who could not conscientiously join in the formulary of the Church. Due provision is made for necessary publicity, and the marriage can be legally contracted in a Register Office. Marriages in the Church of England (without banns or licence), marriages of Quakers, Jews, Dissenters, and Roman Catholics, and marriages according to the civil or secular form, must be preceded by a given notice from one of the parties to the Superintendent-Registrar of the district. Civil marriage.

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

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

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

3. By notorious cohabitation as man and wife.

Persons living in England and having illegitimate

\* 6th and 7th of Wm. IV. chap. 85.

children, cannot by going to Scotland, there marrying, and then returning, legitimize their children in England. A domicile (or abiding home) in Scotland, and a marriage of the father and mother, legitimates the children in Scotland whenever born.

Foreign marriages valid.

Lawful marriages in foreign countries are valid in England unless they are directly contrary to our laws.

Marriage with a deceased wife's sister is valid in England, if it has been celebrated in a country where such marriage is legal, provided the parties were at the time of the marriage domiciled in such country.

Married women no legal existence.

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

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

A woman's body belongs to her husband; she is in his custody, and he can enforce his right by a writ of *habeas corpus*.

Her personal property becomes his.

What was her personal property before marriage, such as money in hand, money at the bank, jewels, household goods, clothes, &c., becomes absolutely her husband's, and he may assign or dispose of them at his pleasure whether he and his wife live together or not.

He takes her chattels real.

A wife's *chattels real* (*i. e.* estates held during a term of years, or the next presentation to a church living, &c.) become her husband's by his doing some act to appropriate them; but, if the wife survives, she resumes her property.

Equity.

*Equity* is defined to be a correction or qualification of the law, generally made in the part wherein it faileth, or is too severe. In other words, the correction of that wherein the law, by reason of its universality, is deficient. While the Common Law gives the whole of a wife's personal property to her husband, the Courts of Equity, when he proceeds therein to recover property in right of his wife, oblige him to make a settlement of some portion of it upon her, if she be unprovided for and virtuous.

If her property be under 200*l.*, or 10*l.* a-year, a Court of Equity will not interpose.

Her right to support.

Neither the Courts of Common Law nor Equity have any

direct power to oblige a man to support his wife,—the Ecclesiastical Courts (*i. e.* Courts held by the Queen's authority as governor of the Church, for matters which chiefly concern religion) and a Magistrate's court at the instance of her parish alone can do this.

A husband has a freehold estate in his wife's lands during the joint existence of himself and his wife, that is to say, he has absolute possession of them as long as they both live. If the wife dies without children, the property goes to her heir, but if she has borne a child, her husband holds possession until his death.

His power over her real property.

Money earned by a married woman belongs absolutely to her husband; that and all sources of income, excepting those mentioned above, are included in the term personal property.

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

By the particular permission of her husband she can make a will of her personal property, for by such a permission he gives up his right. But he may revoke his permission at any time before *probate* (*i. e.* the exhibiting and proving a will before the Ecclesiastical Judge having jurisdiction over the place where the party died).

A wife's will.

The legal custody of children belongs to the father. During the life-time of a sane father, the mother has no rights over her children, except a limited power over infants, and the father may take them from her and dispose of them as he thinks fit.

A mother's rights over children.

If there be a legal separation of the parents, and there be neither agreement nor order of Court, giving the custody of the children to either parent, then the *right to the custody of the children* (except for the nutriment of infants) belongs legally to the father.

A married woman cannot sue or be sued for contracts—nor can she enter into contracts except as the agent of her husband; that is to say, her word alone is not binding in law, and persons giving a wife credit have no remedy against her. There are some exceptions, as where she contracts debts upon estates settled to her separate use, or where a wife carries on trade separately, according to the custom of London, &c.

Responsibility of a wife.

A husband is liable for his wife's debts contracted before

Responsibility of a hus-

band for his  
wife's debts  
prior to mar-  
riage  
Witnesses.

marriage, and also for her breaches of trust committed before marriage.

Neither a husband nor a wife can be witnesses against one another in criminal cases, not even after the death or divorce of either.

Wife cannot  
bring actions.

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

A wife acts  
under coercion  
of her  
husband.

As the wife acts under the command and control of her husband, she is excused from punishment for certain offences, such as theft, burglary, housebreaking, &c., if committed in his presence and under his influence. A wife cannot be found guilty of concealing her felon husband or of concealing a felon jointly with her husband. She cannot be found guilty of stealing from her husband or of setting his house on fire, as they are one person in law. A husband and wife cannot be found guilty of conspiracy, as that offence cannot be committed unless there are two persons.

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### USUAL PRECAUTIONS AGAINST THE LAWS CONCERNING THE PROPERTY OF MARRIED WOMEN.

An engaged  
woman can-  
not dispose of  
her property.

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

Settlements.

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

Difference be-  
tween Com-  
mon Law and  
Equity.

Although the Common Law does not allow a married woman to possess any property, yet in respect of property settled for her separate use, Equity endeavours to treat her as a single woman.



She can acquire such property by contract before marriage with her husband, or by gift from him or other persons.

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

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

### SEPARATION AND DIVORCE.

A husband and wife can separate upon a deed containing terms for their immediate separation, but they cannot legally agree to separate at a *future* time. The trustees of the wife must be parties to the deed, and agree with the husband as to what property the wife is to take, for a husband and wife cannot covenant together.

Divorce is of two kinds :—

1st. Divorce à mensâ et thoro, being only a separation from bed and board.

2nd. Divorce à vinculo matrimonii, being an entire dissolution of the bonds of matrimony.

The grounds for the first kind of divorce are, 1st. Adultery, 2nd. Intolerable Cruelty, and 3rd. Unnatural Practices. The Ecclesiastical Courts can do no more than pronounce for this first kind of divorce, or rather separation, as the matrimonial tie is not severed, and there is always a possibility of reconciliation.

The law cannot dissolve a lawful marriage; it is only in the Legislature that this power is vested. It requires an act of Parliament to constitute a divorce à vinculo matrimonii, but the investigation rests by usage with the Lords alone, the House of Commons acting upon the faith that the House of Lords came to a just conclusion.

This divorce is pronounced on account of adultery in the wife, and in some cases of aggravated adultery on the part of the husband.

The expenses of only a common divorce bill are between six hundred and seven hundred pounds, which makes

Divorce is of two kinds.

the possibility of release from the matrimonial bond a privilege of the rich.

A wife cannot be plaintiff, defendant, or witness in an important part of the proceeding for a divorce, which evidently must lead to much injustice.

### LAWS CONCERNING A WIDOW.

Her property.

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

A wife's paraphernalia.

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

Her liabilities.

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

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

A widow's one-third.

If a man die intestate, the widow, if there are children, is entitled to one-third of the personalty; if there are no children, to one-half: the other is distributed among the next of kin, among whom the widow is not counted. If there is no next of kin the moiety goes to the crown.

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

Quarantine

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

Dower.

A widow has a right to a third of her husband's lands and tenements for her life. Right of dower is generally superseded by settlements giving the wife a jointure. If she accept a jointure she has no claim to dower.

LAWs CONCERNING WOMEN IN OTHER  
RELATIONSHIPS.

A woman can act as agent for another, and, as an attorney, legally execute her authority. A wife can so act if her husband do not dissent. Agent.

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

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

A woman is capable of holding the office of administratrix to an intestate personalty, and administration will be granted to her if she be next of kin to the intestate. But a wife cannot act without the consent of her husband. Administratrix.

If a man place a woman in his house, and treat her as his wife, he is responsible for her debts.

LAWs CONCERNING ILLEGITIMATE CHILDREN  
AND THEIR MOTHERS.

A single woman having a child may throw the maintenance upon the putative father, so called to distinguish him from a husband, until the age of thirteen. Maintenance.

The law only enforces the parents to maintain such child, and the sum the father is obliged to pay, after an order of affiliation is proved against him, never exceeds two shillings and sixpence a week.

The mother, as long as she is unmarried or a widow, is bound to maintain such child as a part of her family until such child attain the age of sixteen.

A man marrying a woman having a child or children at the time of such marriage is bound to support them, whether legitimate or not, until the age of sixteen.

The rights of an illegitimate child are only such as he can acquire; he can inherit nothing, being in law looked Disabilities of a natural child.

upon as nobody's son, but he may acquire property by devise or bequest. He may acquire a surname by reputation, but does not inherit one.

The only incapacity under which he labours is that he cannot be heir-at-law nor next of kin to any person, nor can he have collateral heirs, but only lineal descendants; if he acquire property and die without a will, such property will go to the crown unless he have lineal descendants.

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## R E M A R K S.

THESE are the principal laws concerning women.

It is not now as it once was, when all existing institutions were considered sacred and unalterable; and the spirit which made Blackstone an admirer of, rather than a critic on, every law because it was *law*, is exchanged for a bolder and more discriminating spirit, which seeks to judge calmly what is good and to amend what is bad.

Philosophical thinkers have generally come to the conclusion that the tendency of progress is gradually to dispense with law,—that is to say, as each individual man becomes unto himself a law, less external restraint is necessary. And certainly the most urgently needed reforms are simple erasures from the statute book. Women, more than any other members of the community, suffer from over-legislation.

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

“In short,” says Judge Hurlbut, “a woman is courted and wedded as an angel, and yet denied the dignity of a rational and moral being ever after.”

\* With regard to the property of women, there is taxation without representation, for they pay taxes without having the liberty of voting for representatives, and indeed there seems at present no reason why single women should be denied this privilege.—*Note to Christian's Blackstone.*

“The next thing that I will show you is this particularitie of law; in this consolidation which we call wedlock is a locking together; it is true that man and wife are one person, but understand in what manner. When a small brooke or little river incorporateth with Rhodanus, Humber, or the Thames, the poore rivulet loseth her name, it is carried and recarried with the new associate, it beareth no sway, it possesseth nothing during coverture. A woman as soone as she is married is called covert, in Latine nupta, that is veiled, as it were clouded and overshadowed she hath lost her streame. \* \* I may more truly farre away say to a married woman, her new selfe is her superior, her companion, her master. The mastership shee is fallen into may be called in a terme which civilians borrow from Esop’s Fables, Leonina societate.”\*

Truly “she hath lost her streame,” she is absorbed, and can hold nothing of herself, she has no legal right to any property; not even her clothes, books, and household goods are her own, and any money which she earns can be robbed from her legally by her husband, nay, even after the commencement of a treaty of marriage she cannot dispose of her own property without the knowledge of her betrothed. If she should do so, it is deemed a fraud in law and can be set aside after marriage as an injury to her husband.

It is always said, even by those who support the existing law, that it is in fact never acted upon by men of good feeling. That is true; but the very admission condemns the law, and it is not right that the good feeling of men should be all that a woman can look to for simple justice.

There is now a large and increasing class of women who gain their own livelihood, and the abolition of the laws which give husbands this unjust power is most urgently needed.

Rich men and fathers might still make what settlements they pleased, and appoint trustees for the protection of minors and such women as needed protection; but we imagine it well proved that the principle of protection is

\* The Lawe’s Resolutions of Women’s Rights, A.D. 1632.

wrong, and that the education of freedom and responsibility will enable women to take better care of themselves and others too than can be insured to them by any legal precautions.

Upon women of the labouring classes the difficulty of keeping and using their own earnings presses most hardly. In that rank of life where the support of the family depends often on the joint earnings of husband and wife, it is indeed cruel that the earnings of both should be in the hands of one, and not even in the hands of that one who has naturally the strongest desire to promote the welfare of the children.

All who are familiar with the working classes know how much suffering and privation is caused by the exercise of this *right* by drunken and bad men. It is true that men are legally bound to support their wives and children, but this does not compensate women for the loss of their moral right to their own property and earnings, nor for the loss of the mental development and independence of character gained by the possession and thoughtful appropriation of money; nor, it must be remembered, can the claim to support be enforced on the part of the wife unless she appeals to a court of law. Alas, how much will not a woman endure before she will publicly plead for a maintenance!

Why, we ask, should there be this difference between the married and unmarried condition of women? And why does marriage make so little legal difference to men, and such a mighty legal difference to women? In France it is somewhat more equal; married women have a right, if they marry without a marriage contract, to claim at the death of a husband half of whatever he possessed at the time of marriage, or may have gained afterwards. If a woman have property of her own, she may if she please marry under the "*régime de séparation de corps et de biens*," in which case she has the entire control of her own fortune, and has no need of trustees. But usually marriages in France are of another description, or under the "*régime dotal*," in which case a portion of the property of the wife is left at the disposal of the husband, and the rest placed in the hands of trustees, much as it is with us

in England. The choice which the French law allows is however a great improvement on our law.

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

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

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

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

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

In fact a wife was not regarded in Hungary as a minor, her husband was not her guardian, nor were there trustees



appointed for her property. "None of my countrywomen would ever have submitted to such a marriage settlement as is usual in England," said a Hungarian lady, well known for her genius and reputation. With the one exception of considering all unmarried women as minors, the Hungarian law is very much in advance of ours.

The laws in the United States are generally much the same as ours. As a general rule married women cannot make a devise of real estate. In some of the States there are more reasonable laws, and a married woman may make a will and devise lands in the same manner as men. These States are Ohio, Illinois, Connecticut, Mississippi, and Louisiana. In Ohio the laws are remarkably liberal to women. The first section of the statute of wills in Ohio declares that any person of full age and sound mind and memory may make a will. By the statute of Ohio it is expressly provided that the will of an unmarried woman shall *not* be revoked by her subsequent marriage.

What changes we find in the American laws are improvements upon ours. Is there not evidence in our English laws of old opinions relating to women which are passing away with the old state of things which engendered them? In the early times, when women were obliged by the violent state of society to be always under the guardianship of father, brother, or husband, these laws might be necessary; but in our peaceful times, such guardianship is proved to be superfluous by the fact of the secure, honourable, and independent position of single women who are sufficiently protected by the sanctuary of civilization.

Since all the unmarried women in England are supported either by their own exertions or by the exertions or bequests of their fathers and relations, there is no reason why upon marriage they should be thrown upon the pecuniary resources of their husbands, except in so far as the claims of a third party—children—may lessen the wife's power of earning money, at the same time that it increases her expenses. Of course a woman may, and often does, by acting as housekeeper and manager of her husband's concerns, earn a maintenance and a right to share in his pro-

erty, independent of any children which may come of the marriage. But it is evident that daughters ought to have some sure provision—either a means of gaining their own bread, or property—as it is most undesirable that they should look upon marriage as a means of livelihood.

Fathers seldom feel inclined to trust their daughters' fortunes in the power of a husband, and, in the appointment of trustees, partially elude the law by a legal device. Also, the much abused Court of Chancery tries to palliate the Common Law, and recognizes a separate interest between husband and wife, and allows the wife alone to file a bill to recover and protect her property, and trustees are not necessary if there has been an agreement.

Why should not these legal devices be done away with, by the simple abolition of a law which we have outgrown?

We do not say that these laws of property are the only unjust laws concerning women to be found in the short summary which we have given, but they form a simple, tangible, and not offensive point of attack.

THE END.