

**Cruelty to animals : the speech of Lord Erskine, in the House of Peers, on the second reading of the Bill preventing malicious and wanton cruelty to animals taken in short hand.**

### **Contributors**

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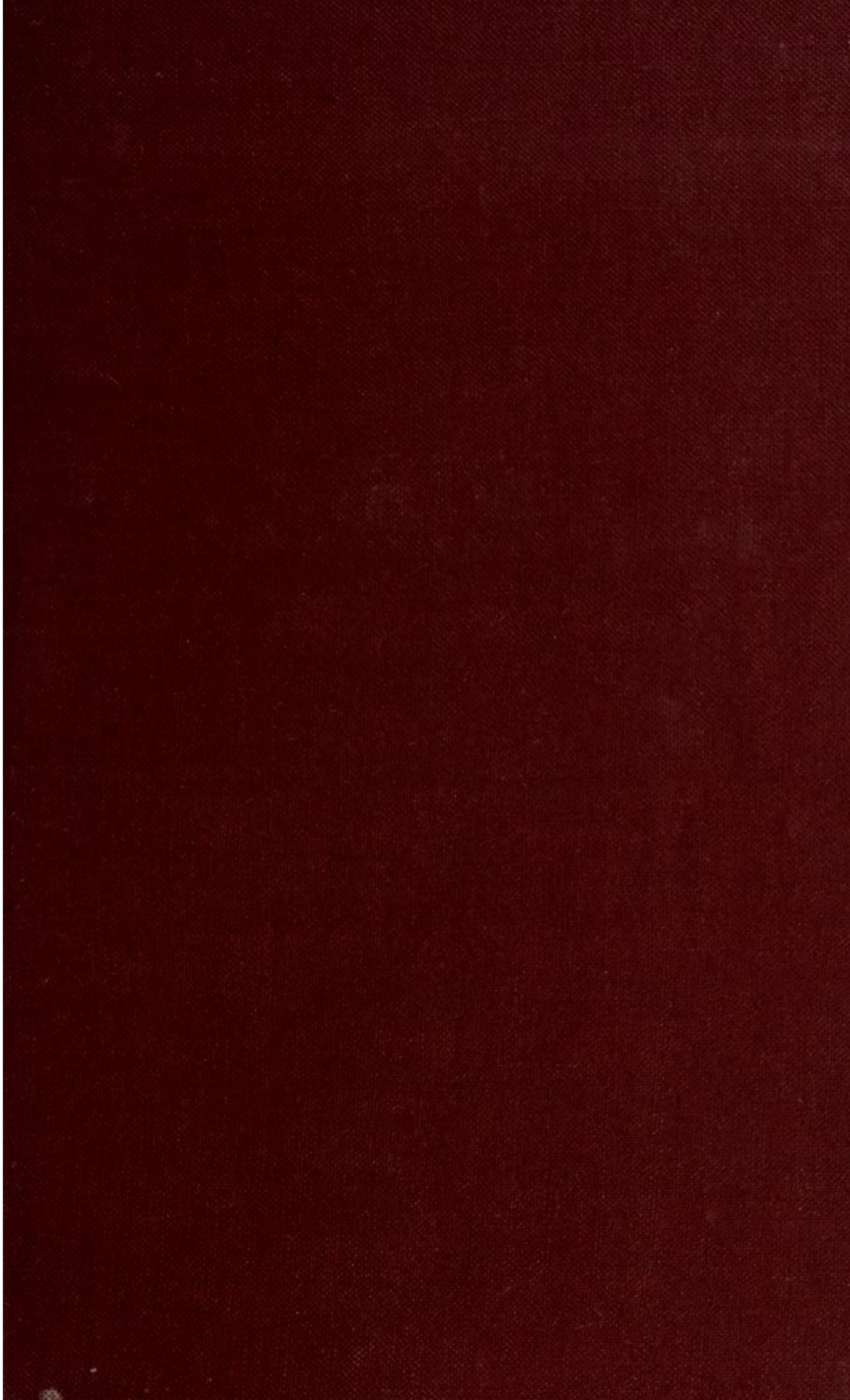
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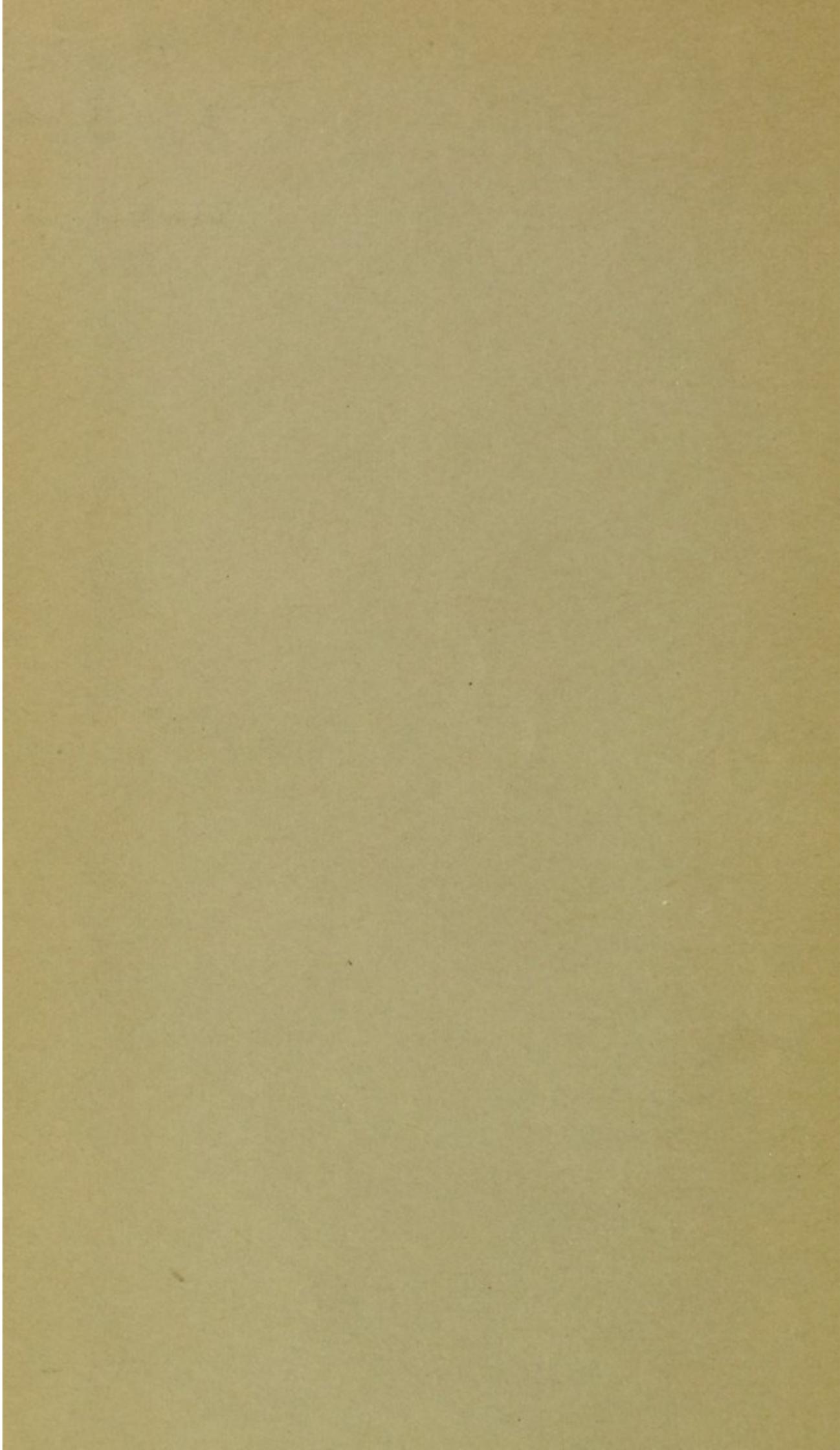


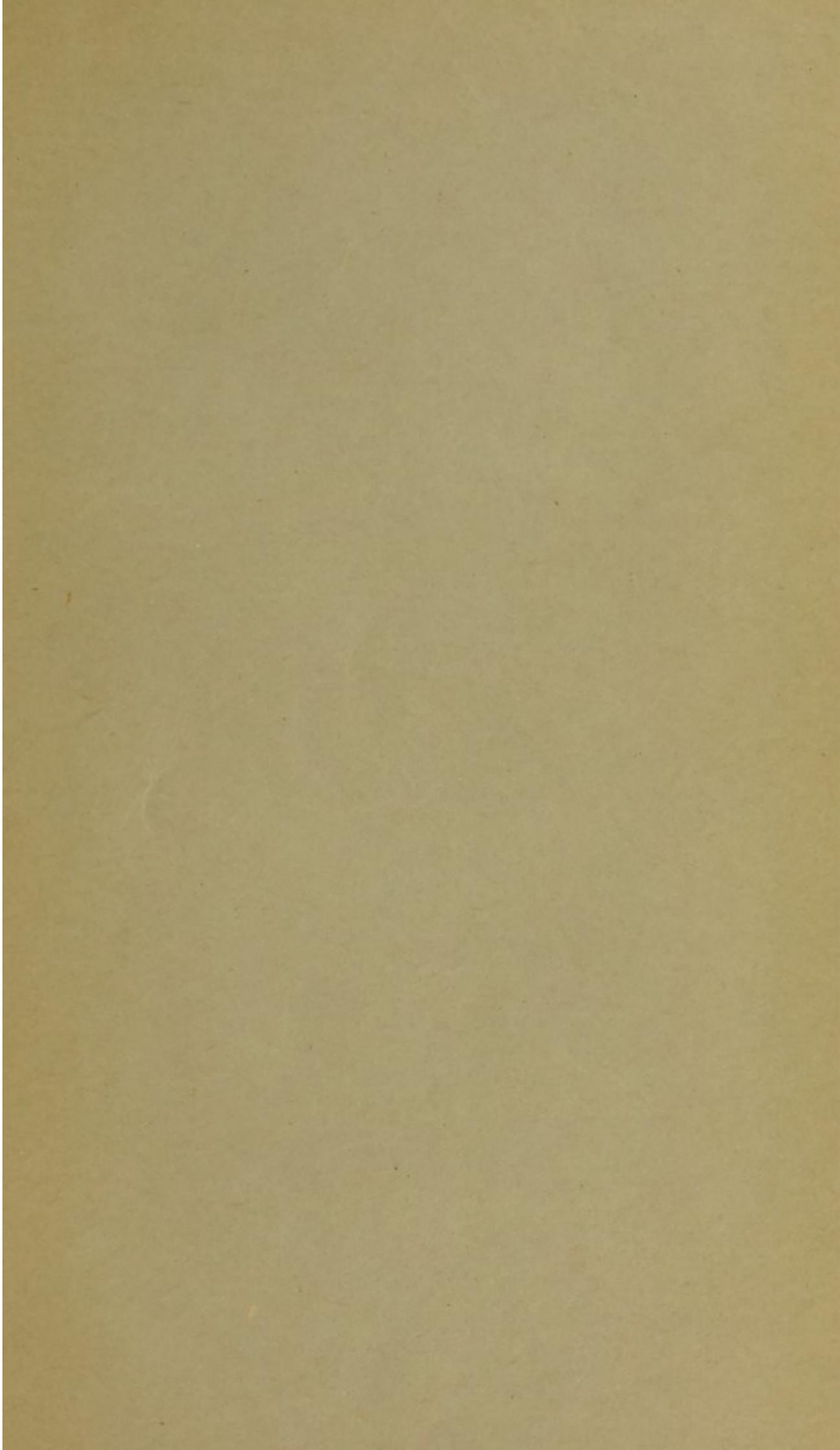
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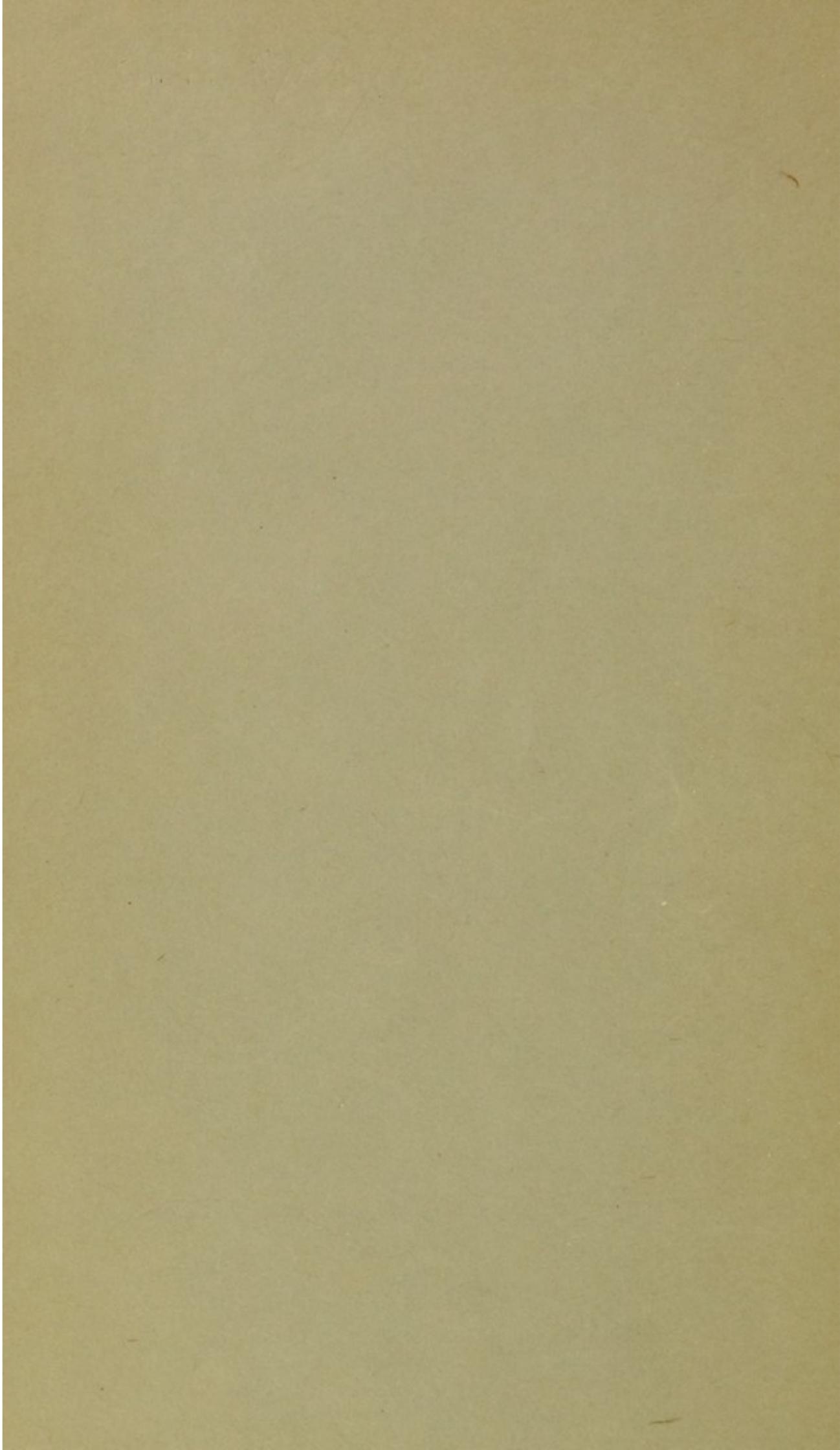
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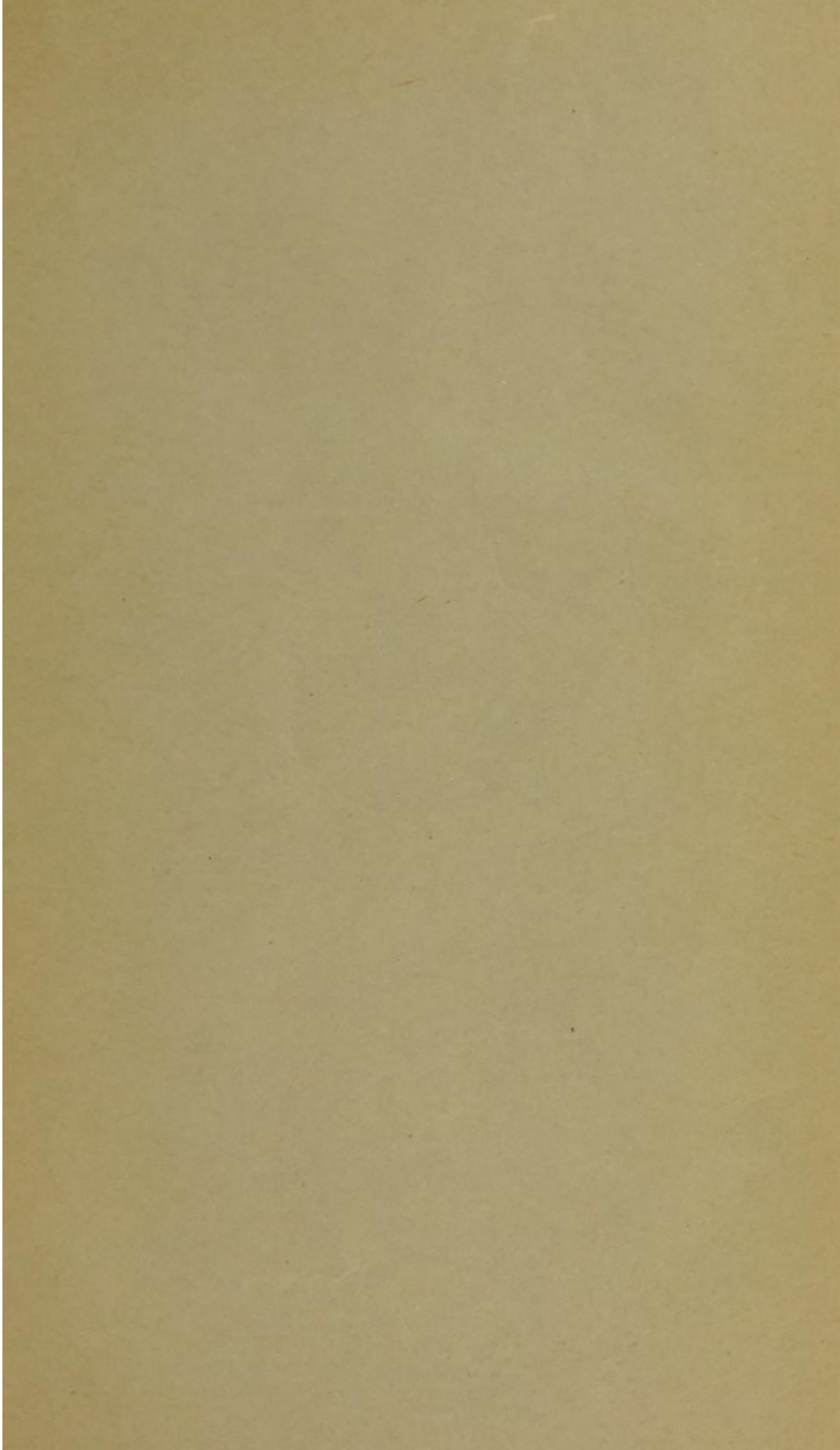
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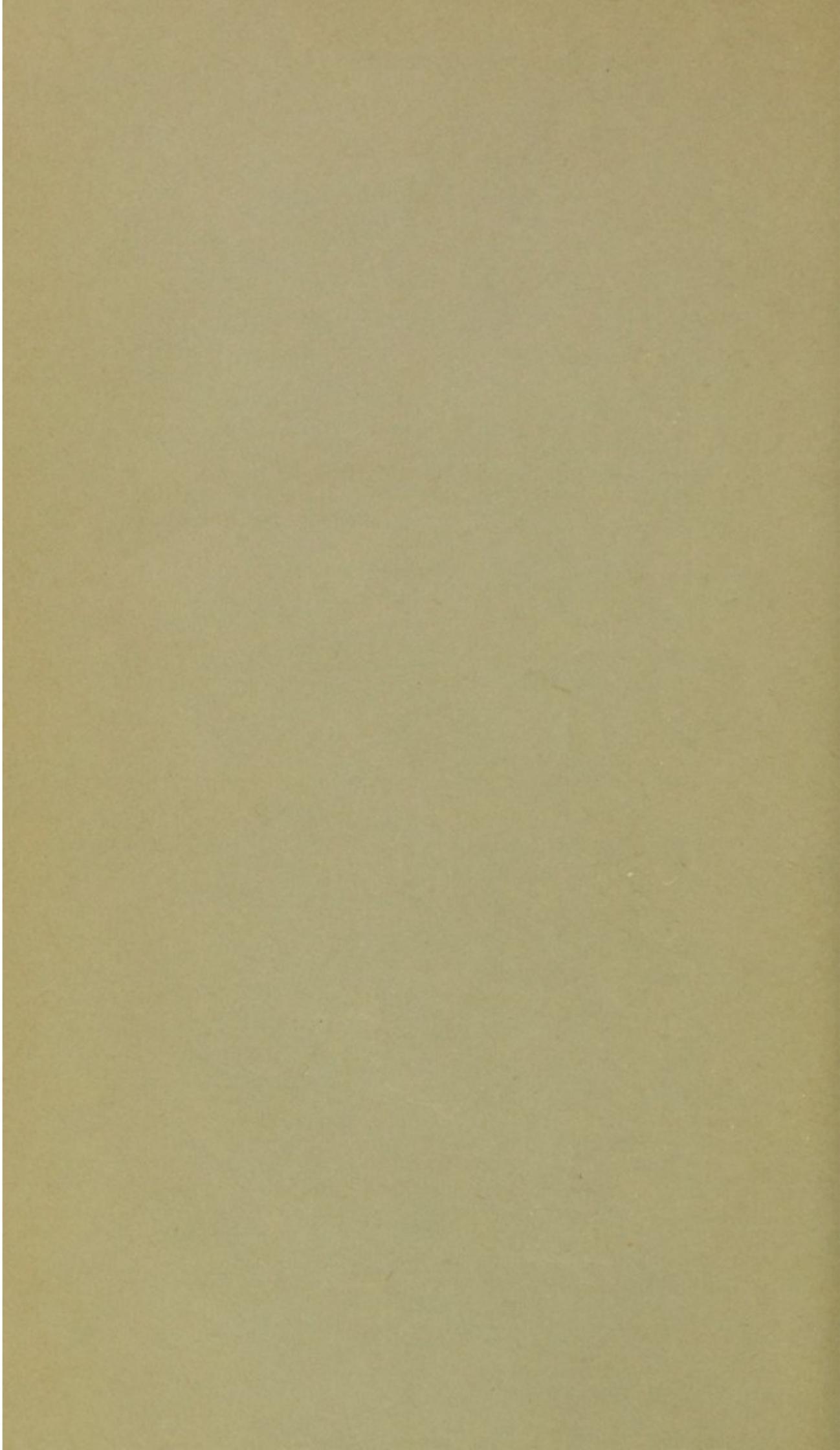
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APPENDIX  
CRUELTY TO ANIMALS.

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THE  
S P E E C H  
OF  
L O R D E R S K I N E,

IN THE  
*HOUSE OF PEERS,*

On the Second Reading of the Bill for preventing

MALICIOUS AND WANTON

CRUELTY TO ANIMALS.

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TAKEN IN SHORT HAND.

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## ADVERTISEMENT.

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**T**HE PUBLISHER of this Pamphlet conceives that no apology will be requisite on his part, for the pains he has taken to procure a correct copy of it, and for presenting the same to the world.

The principles of sound morality and humane policy which this Speech contains, cannot be too widely disseminated ; and they may be the means, in this shape, of producing an effect on the feelings and practices of mankind, nearly equal to that proposed by legislative regulations. At the same time the sanction of law can never be more usefully bestowed, than in giving weight to doctrines which are frequently at variance with the prejudices and passions of mankind.

On the whole, it may be asserted, that this Speech contains such a condensed view of the

arguments in favour of a mild and humane treatment of the brute creation, as to claim a general introduction into families and seminaries of education, and to deserve circulation among the lower classes of society by the clergy, and by all moral and pious persons.

*Bridge Street,  
May 20, 1809.*

SPEECH  
OF  
LORD ERSKINE.

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MY LORDS,

I AM now to propose to the humane consideration of the House, a subject which has long occupied my attention, and which I own to your Lordships is very near my heart.

It would be a painful and disgusting detail, if I were to endeavour to bring before you the almost innumerable instances of cruelty to animals, which are daily occurring in this country, and which, unfortunately, only gather strength by any efforts of humanity in individuals to repress them, without the aid of the law.

These unmanly and disgusting outrages are most frequently perpetrated by the basest and most worthless; incapable, for the most part, of any reproof which can reach the mind, and who know no more of the law, than that it suffers them to indulge their savage dispositions with impunity.

Nothing is more notorious than that it is not only useless, but dangerous, to poor suffering animals, to reprove their oppressors, or to threaten them with punishment. The general answer, with the addition of bitter oaths and increased cruelty is, WHAT IS THAT TO YOU?

If the offender be a servant, he curses you, and asks *if you are his master?* and if he be the master himself, he tells you that the animal is his own. Every one of your Lordships must have witnessed scenes like this. A noble Duke, whom I do not see in his place, told me only two days ago, that he had lately received this very answer. The validity of this most infamous and stupid defence arises from that defect in the law which I seek to remedy. Animals are considered *as property only*—To destroy or to abuse them, from malice to the proprietor, or with an intention injurious to his interest in them, is criminal—but *the animals themselves are without protection*—the law regards them not *substantively*—they have NO RIGHTS!

I will not stop to examine whether public cruelty to animals may not be, under many circumstances, an indictable offence: I think it is, and if it be, it is so much the better for the argument I am about to submit to your Lordships. But if even this were clearly so, it would fall very short of the principle which I mean anxiously and earnestly to invite the House to adopt. I am to ask your Lordships, in the name of that God who gave to Man his dominion over the lower world, to acknowledge and recognize that dominion to be A MORAL TRUST. It is a proposition which no man living can deny, without denying the whole foundation of our duties, and every thing the bill proposes will be found to be absolutely corollary to its establishment; except, indeed, that from circumstances inevitable, the enacting part will fall short of that which the indisputable principle of the preamble would warrant.

Nothing, my Lords, in my opinion, is more interest-

ing than to contemplate the helpless condition of Man with all his godlike faculties, when stripped of the aids which he receives from the numerous classes of inferior beings, whose qualities, and powers, and instincts, are admirably and wonderfully constructed for his use. If, in the examination of these qualities, powers, and instincts, we could discover nothing else but that admirable and wonderful construction for man's assistance; if we found no organs in the animals for their *own* gratification and happiness—no sensibility to pain or pleasure—no grateful sense of kindness, nor suffering from neglect or injury—no senses analagous, though inferior to our own: if we discovered, in short, nothing but mere animated matter, obviously and exclusively subservient to human purposes, it would be difficult to maintain that the dominion over them was a trust; in any other sense at least than to make the best use for ourselves of the property in them which Providence had given us. But, my Lords, it calls for no deep or extended skill in natural history to know that the very reverse of this is the case, and that God is the benevolent and impartial author of all that he has created. For every animal which comes in contact with Man, and whose powers, and qualities, and instincts, are obviously constructed for his use, Nature has taken the same care to provide, and as carefully and bountifully as for man himself, organs and feelings for its own enjoyment and happiness. Almost every sense bestowed upon Man is equally bestowed upon them—Seeing—Hearing—Feeling—Thinking—the sense of pain and pleasure—the passions of love and anger—sensibility to kindness, and pangs from unkindness and neglect,

are inseparable characteristics of *their* natures as much as of *our own*. Add to this, my Lords, that the justest and tenderest consideration of this benevolent system of Nature is not only consistent with the fullest dominion of Man over the lower world, but establishes and improves it. In this, as in every thing else, the whole moral system is inculcated by the pursuit of our own happiness. In this, as in all other things, our duties and our interests are inseparable. I defy any man to point out any one abuse of a brute which is property, by its owner, which is not directly against his own interest. Is it possible then, my Lords, to contemplate this wonderful arrangement, and to doubt for a single moment that our dominion over animals is a trust? They are created indeed for our USE, but not for our ABUSE. Their freedom and enjoyments, when they cease to be consistent with our just dominion and enjoyments, can be no part of their natures; but whilst they are consistent, I say their rights, subservient as they are, ought to be as sacred as our own. And although certainly, my Lords, there can be no LAW for Man in that respect, but such as he makes for himself, yet I cannot conceive any thing more sublime, or interesting, more grateful to Heaven, or more beneficial to earth, than to see such a spontaneous restraint imposed by Man upon himself.

This subject is most justly treated by one of the best poets in our language.

Mr. Cowper in the Task says:—

The sum is this:—If man's convenience, health, or safety interfere, his rights and claims are paramount, and must extinguish theirs, else they are all—

He then proceeds in a most affecting and sublime appeal to our humanity and justice. I have not a sufficient recollection of it, and I will not destroy the effect of it by misrepeating it.

The same subject is touched upon, in most eloquent prose, in the theological works of Mr. Jones, which were put into my hands the other day by my worthy and excellent friend at your table.

Here Lord Erskine read an extract. Mr. Young, of Trinity College, Cambridge, has also published an excellent treatise on the subject; and many of the most worthy and respectable of the clergy have done honour to their sacred functions, by impressing upon their congregations the divine commands, as it regards this important duty.

Every other branch of our duties, when subject to frequent violation, has been recognized and inculcated by our laws; and the breaches of them repressed by punishments. And why not in this, where our duties are so important, so universally extended, and the breaches of them so frequent and so abominable?

But in what I am proposing to your Lordships, disinterested virtue, as in all other cases, will have its own certain reward. The humanity you shall extend to the lower creation will come abundantly round in its consequences to the whole human race. The moral sense which this law will awaken and inculcate, cannot but have a most powerful effect upon our feelings and sympathies for one another. The violences and outrages committed by the lower orders of the people are offences more owing to want of thought and reflection, than to any malignant principle, and whatever, therefore, sets them

a thinking upon the duties of humanity, more especially where they have no rivalries nor resentments, and where there is a peculiar generosity in forbearance and compassion, has an evident tendency to soften their natures, and to moderate their passions in their dealings with one another.

The effect of laws which promulgate a sound moral principle is incalculable; I have traced it in a thousand instances, and it is impossible to describe its value.

My Lords, it was in consequence of these simple views, and on those indisputable principles, that I have framed the preamble of the very short Bill which I now present for a second reading to the House. I might without preamble or preface, have proposed at once to enact, if not to declare, wilful and wanton cruelty to the animals comprehended in it to be a misdemeanor, looking as I now do to the Commons, to enforce the sanction of the law by pecuniary penalties. But then the grand efficacious principle would have been obscured; which, if fortunately adopted by your Lordships, will enact this law as a spontaneous rule in the mind of every man who reads it—which will make every human bosom a sanctuary against cruelty—which will extend the influence of a British statute beyond even the vast bounds of British jurisdiction, and consecrate, perhaps, in all nations, and in all ages, that just and eternal principle which binds the whole living world in one harmonious chain, under the dominion of enlightened Man, the lord and governor of all.

I will now read to your Lordships the preamble as I have framed it.

“Whereas it has pleased Almighty God to subdue

to the dominion, use and comfort of man, the strength and faculties of many useful animals, and to provide others for his food; and whereas the abuse of that dominion by cruel and oppressive treatment of such animals, is not only highly unjust and immoral, but most pernicious in its example, having an evident tendency to harden the heart against the natural feelings of humanity."

This preamble may be objected to as too solemn and unusual in its language; but it must be recollected that the subject of the Bill is most peculiar and unusual; and it being impossible to give practicable effect to the principle in its full extent, it became the more necessary, in creating a duty of imperfect obligation where legal restraints would be inefficacious or impossible, to employ language calculated to make the deepest impression upon the human mind, so as to produce, perhaps, more than the effect of law, where the ordinary sanctions of law were wanting.

It may be now asked, my Lords, why, if the principle of the Bill be justly unfolded by this preamble, the enacting part falls so very short of protecting the whole animal world, or at all events those parts of it which come within the reach of Man, and which may be subject to abuse. To that I answer—It does protect them to a certain degree, by the very principle which I have been submitting to your consideration, and to protect them further, would be found to be attended with insurmountable difficulties, and the whole Bill might be wrecked by an impracticable effort to extend it. But I shall be happy to follow others in the attempt. The Bill, however, as it regards *all* animals,

creates a duty of imperfect obligation, and your Lordships are very well aware that there are very many and most manifest and important moral duties, the breaches of which, human laws cannot practically deal with, and this I fear will be found to be the case in the subject now under consideration.

Animals living in a state of nature would soon overrun the earth, and eat up and consume all the sustenance of Man, if not kept down by the ordinary pursuits and destruction of them, by the only means in which they can be kept down and destroyed ; and it is remarkable that other animals have been formed by Nature, with most manifest instincts to assist us in this necessary exercise of dominion ; and indeed, without the act of Man, these animals would themselves prey upon one another, and thus be visited by death, the inevitable lot of all created things, in more painful and frightful shapes. They have, besides, no knowledge of the future, and their end, when appropriated fitly for our food, is without prolonged suffering. This economy of Providence, as it regards animals, which from age to age have lived in an unreclaimed state, devoted to the use of Man and of each other, may serve to reconcile the mind to that mysterious state of things in the present fallen and imperfect condition of the world.

This state of wild animals is further strikingly illustrated by the view of such of them as have been spared from the human huntsman, or the more numerous tribes of animals of prey. They are swept away by the elements in hard winters, retiring, as most of them do, to a solitary, protracted, and painful death.

Old age, my Lords, even amongst men, is but a rare

blessing ; amongst such brutes, perhaps never. Old age can only be supported in comfort by that aid and tenderness from others, arising from the consciousness of those ties of Nature, which it has not pleased the Divine Providence to dispense to the lower world, but which, as the greatest of all blessings, it has communicated to Man. When the brutes have fulfilled their duties to their young, for their protection, they know them no more, and die of old age, or cold, or hunger, in view of one another, without sympathy, or mutual assistance, or comfort.

It is the same to a certain extent with regard to those reclaimed animals devoted to Man's use for food, whose faculties, as far as our observation is capable of a just comparison, approach nearer to human reason. The old age even of such animals, for the reasons adverted to, would seldom be satisfactory. When they pass, therefore, from life to death, in a manner which gives them no foretaste of their doom, and consequently no sense of pain or sorrow in the road to it, the ways of God are justified to Man.

The Bill, therefore, as it regards wild animals, could not easily have been framed for practicable operation, except by sanctioning as it does the principle of the preamble, which will, I trust, insensibly extend its influence to the protection of every thing that has life; by bringing habitually into the view of the mind the duties of imperfect obligation which it inculcates; and with regard to animals bred by man, or reclaimed for food, it will directly protect them against the cruelties which are generally committed on them, viz. the unmercifully driving them and beating them on their

passage to fairs and markets, and against unnecessary sufferings in the hour of death.

Before I leave this part of the subject, I think it right to advert to the practice of bull-baiting. I did not intend to have touched on it, but as I find that some who support the principle of this bill, feel a difficulty as it regards this practice, it becomes necessary to consider how it will be affected by its operation.

A Bill was brought into the House of Commons, whilst I had the honour of a seat there, to repress this practice, but not upon the true principle. The framers of it were, I am persuaded, actuated by motives of humanity; but they mixed with it very laudable objects of human policy, which rather obscured the principle of protection to the animals. One great object of the Bill, and it was laudable on that account, was, to put an end to sports which led away the servants and labourers of manufacture and husbandry from the service of their masters.

The attack upon bull-baiting coming in this questionable shape, was defended as politic by talents capable of defending any thing; but talents (I am ready to admit) possessed by a person of as humane and feeling a mind as ever distinguished any man—a man, besides, of a most beautiful genius, and whom I have always esteemed and honoured\*. The truth is, my Lords, that the matter was never fairly presented to his heart, and his intellect had got a wrong bias upon the subject. I shall not, however, come in contact with my excellent friend in his different view of this subject.

This Bill says not a word about bull-baiting. I only

\* Supposed to be Mr. Windham.

include a bull in my catalogue of protected animals. They, therefore, who support the practice, may still support it successfully, if they can convince a Court and Jury, and the other Magistracies of their countrymen, that it does not fall within the description of wilful and wanton cruelty ; and if that shall be the general feeling of Courts and Magistrates on the subject, the practice will cease to be supported.

As to the tendency of barbarous sports of any kind or description whatsoever, to nourish the national characteristic of manliness and courage, the only shadow of argument I ever heard upon such occasions, all I can say is this : that from the mercenary battles of the lowest of beasts (viz. human boxers), up to those of the highest and noblest that are tormented by Man for his degrading pastime, I enter this public protest against it. I never knew a man remarkable for heroic bravery, whose very aspect was not lighted up by gentleness and humanity ; nor a kill him and eat him countenance that did not cover the heart of a bully or a poltroon.

As to other reclaimed animals which are not devoted to our use as food, but which are most wonderfully organized to assist Man in the cultivation of the earth, and by their superior activity and strength to lessen his labour, in the whole circle of his concerns, different protections become necessary, and they are also provided for by the bill, and without the loss or abridgment of any one right of property in such animals. On the contrary, all its provisions protect them, as property, from the abuses of those to whose care and government their owners are obliged to commit them. They also reach the owners themselves, if, from an inordinate desire of gain, or other selfish consideration, they

*abuse* the animals their property, which is limited to their use.

It would be wasting your Lordships' time if I were to enumerate the probable cases which this part of the Bill will comprehend. It is well observed by an Italian Philosopher, "that no man desires to hear what he has already seen." Your Lordships cannot have walked the streets, or travelled on the roads, without being perfectly masters of this part of the subject. You cannot but have been almost daily witnesses to most disgusting cruelties practised upon beasts of carriage and burthen, by the violence and brutality of their drivers. To distinguish such brutality and criminal violence, from severe, but sometimes necessary discipline, may at first view appear difficult, and on that account a serious objection to the Bill; but when I come to that part of the subject, I pledge myself to shew that it involves no difficulty whatsoever. But there are other abuses far more frequent and important, which will require a more particular consideration. For one act of cruelty in servants, there are an hundred in the owners of beasts of labour and burthen, sometimes committed by the owners alone, from a scandalous desire of gain, and sometimes in a most unworthy partnership with their superiors, who are equally guilty, with no gain at all, nor for any motive that it would not be disgraceful to acknowledge. I allude, my Lords, to our unhappy post-horses. It is not my wish, my Lords, to be a fanciful reformer of the world, nor to exact that the manners and customs of a highly civilized nation, should be brought to the standard of simplicity and virtue, if indeed such a standard ever

existed upon earth. I do not seek to appoint inspectors to examine the books of inn-keepers, so as to punish any excess in the numbers of their stages, as you do an excess of outside passengers on the roofs of coaches. I know there are very many cases (which could not be brought strictly within the scope of necessities) where these poor animals must grievously suffer, yet where no law can properly reach to protect them. The demands, though not imminent, of human health, and even of convenience; the occasional exigencies of commerce; the exercise of franchises, and many other cases which must occur to every body, would furnish obvious exceptions without violation of the principle, and which every Court and Magistrate would know how to distinguish. But the Bill, if properly executed, would expose inn-keepers to a reasonable punishment, who will palpably devote an innocent animal to extreme misery, if not to death itself, by a manifest and outrageous excess of labour, rather than disoblige a mere traveller, engaged in no extraordinary business, lest in future he should go to the inn opposite—when the law shall give a rule for both sides of the way, this most infamous competition will be at an end.

For my own part, my Lords, I can say with the greatest sincerity to your Lordships, that nothing has ever excited in my mind greater disgust, than to observe what we all of us are obliged to see every day in our lives—Horses panting—what do I say! literally dying under the scourge, when on looking into the chaises, we see them carrying to and from London men and women, to whom or to others it can be of no possible signification whether they arrive one day sooner or

later, and sometimes indeed whether they ever arrive at all. More than half the post-horses that die from abuse in harness, are killed by people, who, but for the mischief I am complaining of, would fall into the class described by Mr. Sterne, of simple or harmless travellers, galloping over our roads for neither good nor evil, but to fill up the dreary blank in unoccupied life. I can see no reason why all such travellers should not endeavour to overcome the *ennui* of their lives, without killing poor animals, more innocent and more useful than themselves. To speak gravely, my Lords, I maintain that human idleness ought not to be permitted, by the laws of enlightened Man, to tax for nothing, beyond the powers which God has given them, the animals which his benevolence has created for our assistance.

But another abuse exists, not less frequent and much more shocking, because committed under the deliberate calculation of intolerable avarice. I allude to the practice of buying up horses when past their strength, from old age or disease, upon the computation (I mean to speak literally) of how many days torture and oppression they are capable of living under, so as to return a profit with the addition of the flesh and skin, when brought to one of the numerous houses appropriated for the slaughter of horses. If this practice only extended to carrying on the fair work of horses to the very latest period of labour, instead of destroying them when old or disabled, I should approve instead of condemning it. But it is most notorious, that with the value of such animals all care of them is generally at an end, and you see them (I speak literally, and of a

systematic abuse) sinking and dying under loads, which no man living would have set the same horse to, when in the meridian of his strength and youth.

This horrid abuse, my Lords, which appears at first view to be incapable of aggravation, is nevertheless most shockingly aggravated when the period arrives at which one would think cruelty must necessarily cease, when exhausted Nature is ready to bestow the deliverance of death. But even then, a new and most atrocious system of torture commences, of which, my Lords, I could myself be a witness in your committee, as it was proved to my own perfect satisfaction, and that of my friend Mr. Jekyll, upon the information of a worthy Magistrate, who called our attention to the abuse. But perhaps, my Lords, I shall better describe it, as it will at the same time afford an additional proof of these hideous practices, and of their existence at this hour, by reading a letter which I received but two days ago, the facts of which I am ready to bring in proof before your Lordships.

Here Lord Erskine read an extract from a letter which stated—

“ A very general practice of buying up horses still  
 “ alive, but not capable of being even further abused by  
 “ any kind of labour. These horses, it appeared, were  
 “ carried in great numbers to slaughter-houses, but  
 “ not killed at once for their flesh and skins, but left  
 “ without sustenance, and literally starved to death,  
 “ that the market might be gradually fed. The poor  
 “ animals in the mean time being reduced to eat their  
 “ own dung, and frequently gnawing one another’s  
 “ manes in the agonies of hunger.”

Can there be a doubt, my Lords, that all such shocking practices should be considered and punished as misdemeanors? Here again it may be said that the Bill, in this part of it, will invest Magistrates with a novel and dangerous discretion. I am not yet arrived at that part of the case, though I am fast approaching it; when I do, I pledge myself without *fear* to maintain the contrary, to the satisfaction of every one of your Lordships, more especially including the learned Lords of the House. No less frequent and wicked an abuse, is the manifest overloading of carriages and animals of burden, particularly asses, and as far as this poor animal is unjustly considered an emblem of stupidity, the owners who thus oppress him are the greater asses of the two. The same may be said of keeping animals without adequate food to support their strength, or even their existence—this frequently happens to beasts impounded for trespasses; I have had complaints of this abuse from all parts of the country. The notice to the owner is seldom served, and thus the poor innocent animal is left to starve in the pound.—As far as an animal is considered merely as property, this may be all very well, and the owner must find him out at his peril, but when the animal is looked to, upon the principle of this Bill, the impounder ought to feed him, and charge it to the owner as part of the damages.

Only one other offence remains, which I think it necessary to advert to, which it is difficult sufficiently to expose and stigmatize, from the impudence with which it is every day committed, as if the perpetrators of this kind of wickedness were engaged in something extremely entertaining and innocent, if not merito-

rious—I allude to those extravagant bets for trying the strength and indurance of horses—not those animating races, properly so called, which the horse really enjoys, and which, though undoubtedly attended with collateral evils, has tended greatly to improve the breed of that noble and useful animal. The contests which I consider as wilful and wanton cruelty, are of a different kind—I maintain that no man, without being guilty of that great crime, can put it upon the uncertain and mercenary die, whether in races against time—no—not properly so called, but rather journeys of great distances within limited periods, the exertions shall very far exceed the ordinary power which Nature has bestowed on the unhappy creature, thus wickedly and inhumanly perverted from the benevolent purposes of their existence.

All the observations I have just been making to your Lordships, undoubtedly apply to the maliciously tormenting any animal whatsoever, more especially animals which we have voluntarily reclaimed and domesticated; and yet I fairly own to your Lordships, that as the Bill was originally drawn, and as it stood until a few days ago, it would not have reached many shameful and degrading practices. The truth is, that I was afraid to run too rapidly and directly against prejudices. But on conversing with very enlightened and learned men, I took courage in my own original intention, and introduced the concluding clause, which comprehended the wickedly and wantonly tormenting any reclaimed animal; the effect of which in practice I will explain hereafter, when I come to shew the practicability of executing the law without trespassing upon

the just rights and privileges of mankind. If your Lordships, however, shall ultimately differ from me in this part of the subject, you can strike out this clause in the Committee. I have purposely kept it quite distinct and separate from the rest of the Bill, as I originally framed it, being resolved to carry an easy sail at first, for fear of upsetting my vessel in a new and dangerous navigation.

I now come, my Lords, to the second part of the case, which will occupy but a small portion of your Lordships' time, on which I am afraid I have trespassed but too long already. *Hear! Hear! Hear!*

Supposing, now, your Lordships to be desirous of subscribing to the principles I have opened to you, and to feel the propriety of endeavouring to prevent as far as possible the inhuman cruelties practised upon animals, so general and so notorious, as to render a more particular statement of them as unnecessary as it would have been disgusting: the main question will then arise, viz. How the jurisdiction erected by this Bill, if it shall pass into a law, may be executed by courts and Magistrates, without investing them with a new and arbitrary discretion.

My Lords, I feel the great importance of this consideration, and I have no desire to shrink from it; on the contrary I invite your Lordships to the closest investigation of it, and for that purpose I will myself anticipate every possible objection of that description, and give your Lordships, in a very few words, the most decisive answers to them.

How, it may be first asked, are Magistrates to distinguish between the justifiable labours of the animal,

which from Man's necessities is often most fatiguing, and apparently excessive, and that real excess which the Bill seeks to punish as wilful and wanton cruelty? How are they to distinguish between the blows which are necessary, when beasts of labour are lazy or refractory, or even blows of sudden passion and temper, from deliberate, cold-blooded, ferocious cruelty, which we see practised every day we live, and which have a tendency, as the preamble recites, to harden the heart against all the impulses of humanity?

How, in the same manner, are they to distinguish between the fatigues and sufferings of beasts for slaughter, in their melancholy journeys to death in our markets, from unnecessary and therefore barbarous aggravations of them?

Here, my Lords, I am at home;—here I know my course so completely, that I can scarcely err. I am no speculator upon the effect of the law which I propose to you, as the wisest legislators must often be, who are not practically acquainted with the administration of justice. Having passed my life in our courts of law when filled with the greatest judges, and with the ablest advocates, who from time to time have since added to their number, I know with the utmost precision the effect of it in practice, and I pledge myself to your Lordships, that the execution of the Bill, if it passes into law, will be found to be most simple and easy; raising up no new principles of law, and giving to courts no larger discretion nor more difficult subjects for judgment than they are in the constant course of exercising.

First of all, my Lords, the law I propose to your

Lordships is not likely to be attended with abuse in prosecution, a very great, but I am afraid an incurable evil in the penal code. I stimulate no mercenary informers, which I admit often to be necessary to give effect to criminal justice. I place the lower world entirely under the genuine unbought sympathies of Man.

No one is likely to prosecute by indictment, or to carry a person before a Magistrate, without probable, or rather without obvious and flagrant cause, when he can derive no personal benefit from the prosecution, nor carry it on without trouble and expence. The law is, therefore, more open to the charge of inefficacy than of vexation.

It can indeed have no operation except when compassionate men (and I trust they will become more numerous from the moral sense which this Bill is calculated to awaken), shall set the law in motion against manifest and disgusting offenders, to deliver themselves from the pain and horror which the immediate view of wilful and wanton cruelty is capable of exciting, or is rather sure to excite in a generous nature.

What possible difficulty then can be imposed upon the Magistrate, who has only to judge upon *hearing*, from his own humane feelings, what such disinterested informers have judged of from having *seen* and *felt*. The task is surely most easy, and by no means novel. Indeed, the whole administration of law, in many analogous cases, consists in nothing else but in discriminations generally more difficult in cases of personal wrongs.

Cruelty to an apprentice, by beating, or over labour, is judged of daily upon the very principle which this

bill will bring into action in the case of an oppressed animal.

To distinguish the severest discipline to command obedience, and to enforce activity in such dependents from brutal ferocity and cruelty, never yet puzzled a judge or a jury, never at least in my very long experience; and when want of sustenance is the complaint, the most culpable over-frugality is never confounded with a *wicked* and malicious privation of food.

The same distinctions occur frequently, upon the plea of moderate chastisement, when any other servant complains of his master, or when it becomes necessary to measure the degree of violence, which is justifiable in repelling violence, or in the preservation of rights.

In the same manner the damage from a frivolous assault or of a battery, the effect of provocation or sudden temper is daily distinguished in our Courts, from a severe and cold-blooded outrage. A hasty word, which just conveys matter that is actionable, is in the same manner distinguished in a moment from malignant and dangerous slander. Mistakes in the extent of authority, which happen every day in the discharge of the complicated duties of the magistracy, are never confounded for a moment, even when they have trenched severely upon personal liberty, with an arbitrary and tyrannous imprisonment. Unguarded or slight trespasses upon property, real or personal, are in the same way the daily subjects of distinction from malicious deprivations of rights, or serious interruptions of their enjoyment.

Similar, or rather nicer distinctions, are occurring

daily in our Courts—when Libel or no Libel is the question. A line must be drawn between injurious calumny, and fair, though perhaps unpleasant animadversion; but plain good sense without legal subtlety is sure to settle it with justice—so every man may enjoy what is his own, but not to the *injury* of his neighbour. What is an injury, or what only a loss, without being injurious, is the question in all cases of Nuisance, and they are satisfactorily settled by the common understandings and feelings of mankind.

My Lords, there would be no end of these analogies, if I were to pursue them; I might bring my whole professional life, for near thirty years, in review before your Lordships.

I appeal to the learned Lords of the House, whether these distinctions are not of daily occurrence—I appeal to my noble and learned friend on the woolsack, whether, when he sat as Chief Justice of the Common Pleas, he found any difficulty in these distinctions—I appeal to my noble and learned friend, who sits just by him, whose useful and valuable life is wholly occupied amidst these questions, whether they are doubtful and dangerous in the decision, and whether they are not precisely in point with the difficulties which I have anticipated, or with any others which opponents to the Bill can possibly anticipate—I make a similar appeal to another noble and learned friend, who has filled the highest situation, I do not see him at this moment in his place, but to him also, I might make the same fearless application.

I cannot, therefore, conceive a case on which a Ma-

gistrate would be exposed to any difficulty under this Bill, if it should pass into a law.

The cruelties which I have already adverted to, are either committed by owners or by servants charged with the care and government of horses and other cattle. If the owner, unmercifully directs them to be driven to most unreasonable distances, or with burthens manifestly beyond their powers; if he brings them up when past the age of strength, not for a use correspondent to their condition, but upon the barbarous and wicked computation of how long they can be tortured to profit; in neither of these cases can the cruelty be imputed to the servant whom you meet upon the road, struggling to perform the unjust commands of his employer. The master is the obvious culprit—Respondent Superior—the spectators and the servant are the witnesses—and these are the cases where an indictment would operate as a most useful example, without oppression to those who thus offend *systematically* against every principle of humanity and justice.

On the other hand, when no cruel commands are given to the servant, but his own malice offends at once against his master and the unhappy animal which he wickedly abuses, he of course is alone responsible; and these are the cases in which a summary jurisdiction would be most generally resorted to, as more favourable at once to the disinterested informer and to the offender, who would be thus punished with a small penalty, and be delivered from an expensive prosecution.

The other House of Parliament will no doubt accomplish this in the further progress of the Bill.

But in neither of these cases, which comprehend in-

deed, every abuse which the Bill extends to, is there any kind of danger that it will work oppression, or produce uncertainty in decision.

A man cannot, if an owner, be the subject of an indictment, because he may have been less considerate and merciful than he ought to be; nor if a servant, for an unreasonable blow of temper upon an unmanageable charge. No, my Lords, every indictment or information before a Magistrate must charge the offence, to be committed maliciously, and with wanton cruelty, and the proof must correspond with the charge. This Bill makes no act whatever a misdemeanor that does not plainly indicate to the Court or Magistrate a malicious and wicked intent; but this generality is so far from generating uncertainty, that I appeal to every member in our great profession, whether, on the contrary, it is not in favour of the accused, and analagous to our most merciful principles of criminal justice? So far from involving the Magistrate in doubtful discriminations, he must be himself shocked and disgusted before he begins to exercise his authority over another. He must find malicious cruelty; and what that is can never be a matter of uncertainty or doubt, because Nature has erected a standard in the human heart, by which it may be surely ascertained.

This consideration surely removes every difficulty from the last clause, which protects from wilful, malicious and wanton cruelty all reclaimed animals. Whatever may be the creatures which by your own voluntary act, you chuse to take from the wilds which Nature has allotted to them, you must be supposed to exercise this admitted dominion, for use, or for pleasure, or

from curiosity. If for use, enjoy that use in its plenitude ; if the animal be fit for food, enjoy it decently for food ; if for pleasure, enjoy that pleasure, by taxing all its faculties for your comfort ; if for curiosity, indulge it to the full. The more we mix ourselves with all created matter, animate, or inanimate, the more we shall be lifted up to the contemplation of God. But never let it be said, that the law should indulge us in the most atrocious of all propensities, which, when habitually indulged in, on beings beneath us, destroys every security of human life, by hardening the heart for the perpetration of all crimes.

The times in which we live, my Lords, have read us an awful lesson upon the importance of preserving the moral sympathies. We have seen that the highest state of refinement and civilization will not secure them. I solemnly protest against any allusion to the causes of the revolutions which are yet shaking the world, or to the crimes or mistakes of any individuals in any nation ; but it connects itself with my subject to remark, that even in struggles for human rights and privileges, sincere and laudable as they occasionally may have been, all human rights and privileges have been trampled upon, by barbarities far more shocking than those of the most barbarous nations, because they have not merely extinguished natural unconnected life, but have destroyed (I trust only for a season) the social happiness and independence of mankind, raising up tyrants to oppress them all in the end, by beginning with the oppression of each other. All this, my Lords, has arisen from neglecting the cultivation of the moral

sense, the best security of States, and the greatest consolation of the world.

My Lords, I will trouble your Lordships no longer than with admitting, for the sake of the argument, that there may be cases, especially in the beginning, where the execution of the bill may call for the exercise of high judicial consideration, through the dignity and learning of the supreme court of criminal jurisdiction. And here I cannot help saying, that it adds greatly to the security I feel upon this part of the subject, that when the Bill shall have received the sanction of Parliament, it will be delivered over to my noble and learned Friend, who presides so ably in the Court of King's Bench. From his high authority, the inferior Magistracies will receive its just interpretation, and from his manly and expressive eloquence, will be added, a most useful inculcation of its obligations.

For I must once again impress upon your Lordships' minds, the great, the incalculable effect of wise laws, when ably administered upon the feelings and morals of mankind. We may be said, my Lords, to be in a manner new created by them, under the auspices of Religion, in whose steps they must ever tread, to maintain the character of wisdom; they make all the difference between the savages of the wilderness and the audience I am now addressing.—The cruelties which we daily deplore, in children and in youth, arise from defect in education, and that defect in education from the very defect in the law, which I ask your Lordships to remedy. From the moral

sense of the Parent re-animated, or rather in this branch created by the law, the next generation will feel, in the first dawn of their ideas, the august relation they stand in to the Lower World, and the trust which their station in the universe imposes on them, and it will not be left to a future Sterne to remind us, when we put aside even a harmless insect, that the world is large enough for both. This extension of benevolence to objects beneath us, become habitual by a sense of duty inculcated by law, will reflect back upon our sympathies to one another, so that I may venture to say firmly to your Lordships, that the Bill I propose to you, if it shall receive the sanction of Parliament, will not only be an honour to the country, but an æra in the history of the world.

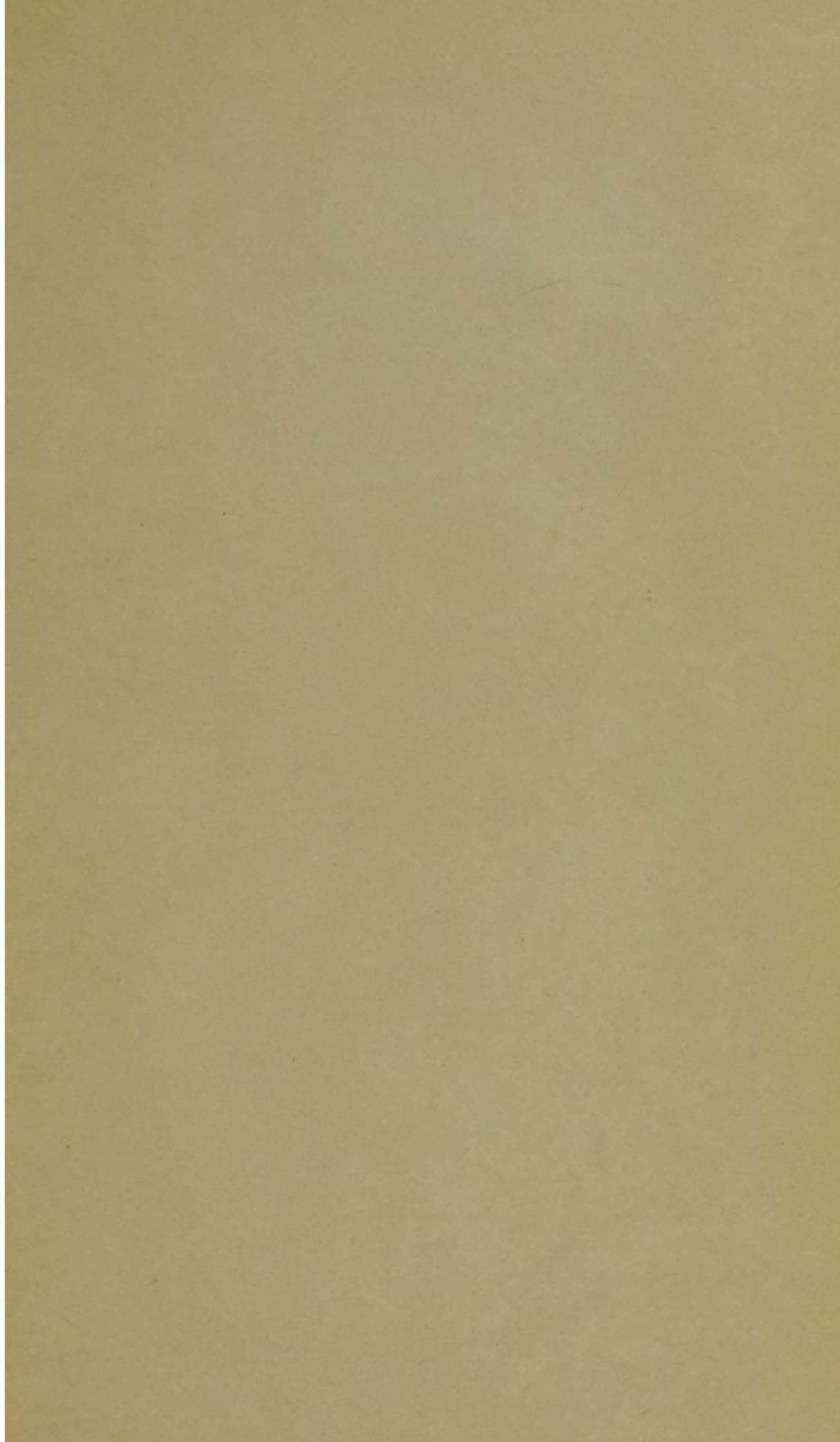
LORD ERSKINE concluded with a few observations, regarding the future progress of the Bill in the Committee, which are not material to the principle of the law, and which we therefore do not print.

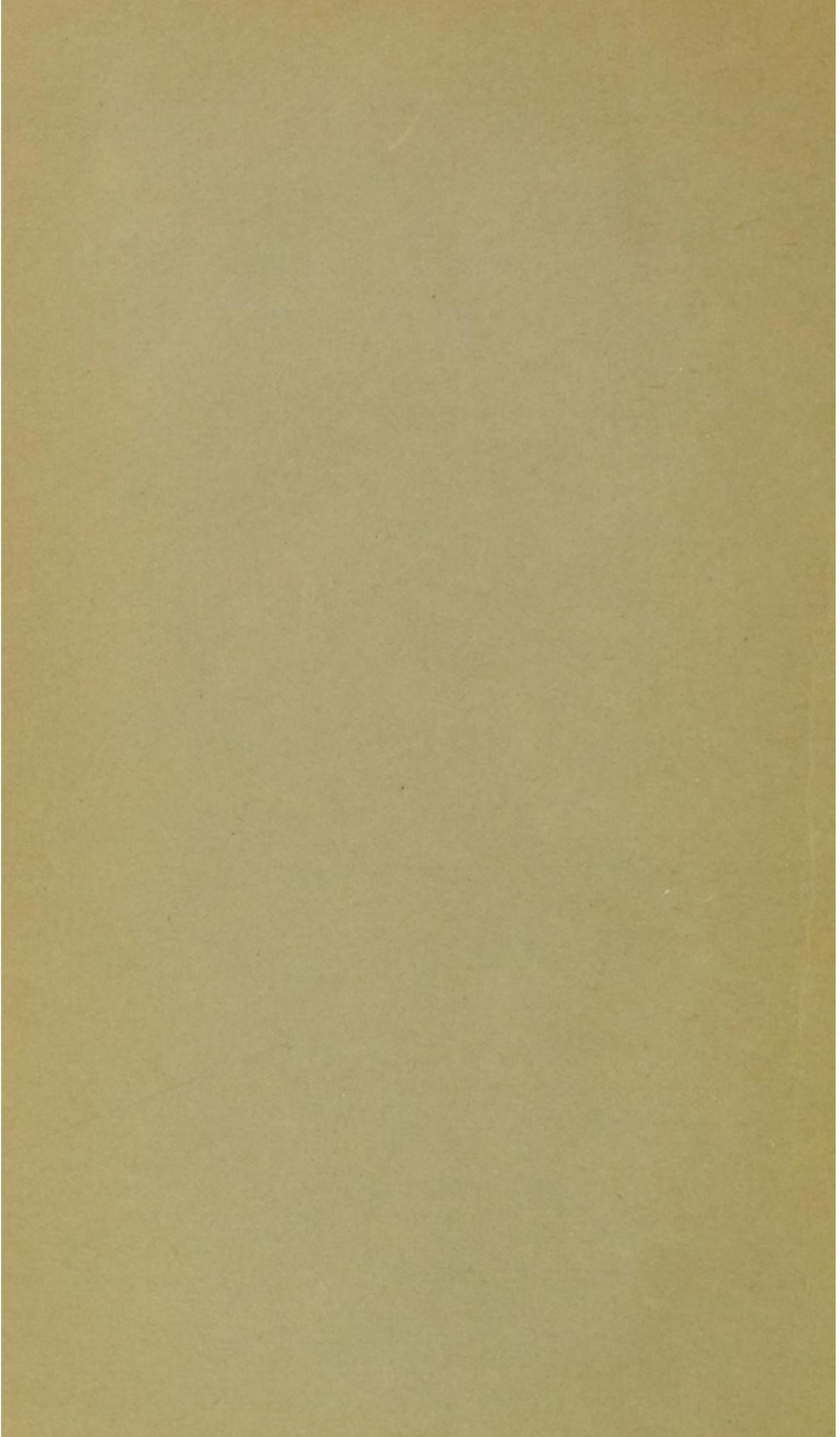
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2. Animals a property only, they have no rights!

Food trust

3. How much man depends on them

4. Did not intend join in that trust

Put couple - Talk

6. Present bill for 2nd reading

8. De Beers destination of wild animals Old age a rare blessing

9. Flankat.

10. Bull biting

11. sig. basis of trust

14. Kueken?

16. out of range

19. Problem to magistrates

23. Servant misbehavior - master's responsibility

