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SHOULD WOMEN PRACTICE LAW IN WISCONSIN?

Justice Ryan's Opinion Reviewed. At common law, before the enactment of any statute relative to attorneys, parties pleaded their own causes; a privilege which is still accorded them by the Constitution of Wisconsin. At common law, therefore, Woman has always been admitted to the bar, if she chose to plead there in her own behalf, as a party to the suit. Such being the common law, previous to any statutory enactment, it would seem that it would have required a statutory prohibition to have excluded her from practicing as an attorney. No such statutory prohibition appears ever to have been enacted. Judge Nott, of the Court of Claims, in refusing Mrs. Lockwood admission, while claiming that the spirit of the common law was against the admission of Woman, declares his conclusions inferentially, and says: "That there has been no express provision by statute, and that there was no exceptional rule at common law, to prevent any such dangerous and scandalous practice," (i.e. the admission of Woman to the bar,) "certainly indicates that the law has never been considered to authorize the admission of Women to the bar. Here we have the concession of Judge Nott, while refusing a woman admission to the bar, o the ground that such admission is unauthorized by common law, that "there has been no express provision by statute, and that there was no exceptional rule at common law to prevent" her admission. Instead of inferring that women may be admitted because the common law does not expressly exclude them, Judge Nott infers the reverse – that they should not be admitted because the common law does not expressly provide for their admission!

The decision of the Supreme Court of Illinois, in refusing Myra Bradwell's application, contents itself with simply saying that "female attorneys at law were unknown in England;" while the Supreme Court of Wisconsin only remarks, generally, that the common law has "excluded" Woman from the bar "ever since courts have administered the common law." None of these learned judges quote a single decision of a court, or a single statute, in support of these assertions. Nor can they. The simple fact is that, until very recently, women have never applied for admission, and consequently the courts have had no opportunity to pass upon the question of her admissibility, and no rulings which could be common law with us have ever been made either for or against her admission. The common law, inasmuch as it has always acknowledged the right of a woman to appear at the bar in her own behalf, and has also recognized her capacity to act as agent for another, must be presumed to favor her admission to the bar to act as agent or attorney for another, unless, either by judicial decision, or legislative enactment, made early enough to be common law in this country, the contrary appears. Judge Nott acknowledges that there has been no such exceptional ruling, and neither the Supreme Courts of Illinois or Wisconsin quote any to sustain their positions. Until this is done, we must take the assertion that the common law has always excluded women from the practice of law, as at least "not proven." Judicial decisions in this country, under statutes not expressly authorizing the admission of women, are as follows: In favor of her admission— Maine, Michigan, Missouri and Iowa; against— Illinois, Wisconsin, and court of claims, Washington, D. C.; so that the weight of authority is to the effect that she may be admitted at common law, unmodified by express statutory enactment.

The learned judge claimed that the pronouns "he" and "his" in the statute providing for the admission of attorneys, are sufficient to exclude Woman from its provisions, and that the statute providing that "every word importing the masculine gender only may extend and be applied to females as well as to males," is permissive merely, and leaves to the discretion of the court the question of the intent of the legislature as to its application to any particular statute. Granting the statute to be

permissive merely, the discretion of the court in interpreting the intention of the legislature, is not an arbitrary one, but is subject to certain principles. The rule has been repeatedly laid down, by the Supreme Court of this State, that "general words in a statute must receive a general construction; and if there is no express exception, the court can create none." See Enchling v. Simmons, 28 Wis. 272; Harrington v. Smith, 28 Wis. 48; Chase v. Whiting, 30 Wis. 544. How, then, can it interpret the general word "person" in the statute providing for the admission of attorneys, so as to restrict its provisions to male persons. Again, it has been decided that "it has always been considered competent for the legislature to enact rules for the construction of statutes, present and future, and when it has done so, each succeeding legislature, unless a contrary intention is plainly manifested, is supposed to employ words and frame enactments with reference to such rules." Prentiss v. Danaher, 20 Wis. 311. The statute providing that "words importing the masculine gender only may extend and be applied to females as well as to males," was enacted previously to the existing statute providing for the admission of attorneys; and therefore the legislature framing the latter statute is supposed to have done so with reference to the rule of construction above quoted, and a contrary intention not being plainly manifested, it is evident that the legislature must be supposed to have intended the extension and application of the masculine words therein used to women.

A labored effort has been made by the learned judge to do away with the argument embodied in the petition, to the effect that the legislature has provided for the admission of Woman to the bar by enacting, first, that she may be admitted to the State University—and second, that all graduates of the law department of the University shall be entitled to admission to the bar of all the courts of the State. His honor begins by complaining that the statutes were not stated fairly. He says:

"The act of 1867 is an amendment of sec. 4 of the act of 1866, re organizing the University." The section of 1866 provided, without qualification, that "the University in all its departments and colleges shall be open alike to male and female students." The section of 1867 substitutes the provision that "the University shall be open to female as well as male students, under such regulations and restrictions as the Board of Regents may deem proper." In both statutes the section provides that all able-bodied male students shall receive military instruction, and makes no other reference to a military department. And the argument that the admission of females under the statute of 1867 to all departments except the military, necessarily contemplated their admission to the law department, falls to the ground, because the statute neither mentions all departments nor excepts the military—if there be a military department. The inaccuracy is the more striking from the fact that the section of 1866 does expressly include all departments and colleges, and the amendment of 1867 evidently ex industrio omits them. The change of an absolute right of admission to all departments and colleges of the University in 1866, to admission to the University under discretionary regulations and restrictions of the regents in 1867, is very significant; the more so that it is the only amendment made. It seems likely that the legislature came to regard the absolute and indiscriminate right of 1866 as dangerously broad, and to consider it necessary to make the right subordinate to the judgment of the regents. And if the law school had then been established by statute, it would be very doubtful whether the admission of females to it would be sanctioned by the act of 1867. But there was no such statute; and the law school was in fact established, not by statute, but —as we learn—by the authorities, of the University sometime in 1868, after the enactment of the section in both forms. The first class of students, all males, graduated in 1869, without color of right to practice. Hence the statute of 1870 to give the right, presumably passed without thought of the admission of females to the bar.

This labored effort to invalidate the argument contained in the petition derogates nothing from its force. That the enactment of 1867 was an amendment of the act of 1866, made to so qualify the

former act as to admit women to the University "under such regulations and restrictions as the board of regents may deem proper," instead of admitting them unqualifiedly as before, proves nothing bearing on the point at issue. The legislature itself places no restrictions upon the admission of women to any and all departments of the University, whether then existing or to be created in future, except impliedly to the military by introducing the word "male" in making provision for military instruction. That this enactment does not admit women to all departments of the University, because the statute does not explicitly mention "all departments," when it says, "The University shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper," is a subterfuge too weak to require a moment's consideration.

By this statute, as was argued in the petition, the board of regents may, at least, admit women, if they choose to do so, to every department of study in the University except the military, whether then existing or afterwards created, and may allow them to graduate therefrom; and according to the law of 1870, such women, so graduating from the law department, are entitled to admission to the bar of every court in the State. Construing the enactment of 1867 in the strictest manner against women, the board of regents are empowered by the Legislature to decide whether women shall be graduated from the law department, and so admitted to the bar of the Supreme Court; and the inquiry in the petition—"Can it have been the intention of the Legislature to give the board of regents of the State University the power to admit women to the practice of law in the Supreme Court of this State, and at the same time to withhold that very power from the Supreme Court itself?"—loses none of its force.

The learned judge "presumes" that the law of 1870 was passed "without thought of the admission of females to the bar."., What reason has he for so presuming? The law department had been in existence two years; a class had .been graduated; women were being admitted to the University in accordance with the statute of 1867; in other states women were already studying law, and applying for admission to the bar. At any time they might apply to pursue the course of law study, provided in the University, and with the approval of the board of regents—if not by right, according to the statute—they might be allowed to graduate from the law department. In the face of all these facts, and all these probabilities, the Legislature without qualification or restriction enacted that "all graduates of the law department of the Wisconsin University, shall be entitled to admission to the bar of all the courts of this State, upon presenting to the judge or judges thereof, certificate of such graduation." It is not to be "presumed" that our legislators were unaware of the full scope and effect of the laws they enacted.

4th. The Social Argument.

His honor, with a humility at once touching and naive, assumes that matrimony is so undesirable a state for Woman that, were she allowed freely to earn an honorable and lucrative support in any other manner, she would never enter it. The wellbeing of society requires her to marry, and she should therefore be forced to do so by having no other alternative! Possibly this is so, though I confess I am slow to believe it. Yet, granting it, for argument sake, would it not be better to render the lot of a married woman more attractive by according her fuller rights therein, and by effort on the part of husbands to so refine and ennoble themselves as to become more desirable companions than so to lower the standard as to take wives who marry because no other alternative is open to them? What honorable and self-respecting man would wish to marry a woman who would never have consented to become his wife could she have been allowed to follow a successful professional career. No; let every honorable employment be opened as freely to Woman as to man, let her be as independent of matrimony as a means of support as he is; and then if he cannot induce her to marry him, let him conclude that the fault is in himself, and proceed to render himself more worthy of her. If we have

fewer marriages, for a time, we shall also have fewer divorces, and fewer discordant families and unhappy children.

Again, his honor assumes in strange contradiction to his previous assumption, that admitting Woman to the bar is forcing her into a profession against her Will for which she is utterly unfitted, and which would be revolting to her better instincts. There is no force used in permitting her to practice when she asks the privilege. The force is in refusing her. No woman would be obliged to follow the legal profession, against her taste or inclination, simply because the Supreme Court would admit her, if she applied, and was duly qualified. If the legal profession is not fitted to her, or she to it, practical experiment will convince her of the fact more speedily and effectually than any amount of theorizing can do. No law exists to prevent women from becoming hod-carriers, and yet women do not become hod-carriers. So, if they are unfitted for the practice of law they will soon find it out, and cease to practice; and that will settle the question. But tell them they shall not practice, and there is nothing on earth they want to do so much; and rest assured they will give Courts and Legislatures no peace till they are accorded the opportunity.

The learned judge declares that the legal profession "has essentially and habitually to do with all that is selfish and extortionate, knavish, and criminal, coarse and brutal, repulsive and obscene in human life;" forgetting that this is but the reverse side of the picture, and that the theory of law lies, and its practice should have, if it has not, essentially and habitually to do with all that is unselfish and noble, honest and honorable, high and holy, refined and pure, in human life. The object of law is the administration of justice, and the righting of wrongs, and carries with it a Consideration of very many of the most weighty and important questions affecting the welfare of humanity; questions which can be more carefully and thoroughly investigated, and more successfully handled; by one who has had practical experience in dealing with them in the concrete than by any other. In the consideration of these questions, the peculiar qualities of womanhood which the honorable court sets forth so eloquently, are needed no less than the sterner and hardier traits of manhood. "It is not good for man to be alone," even in courts of justice; and this his honor unwittingly proves in endeavoring to prove the reverse. He tells us that the presence of the petitioner in court prevented him from using a certain smutty illustration to demonstrate a point of law which he mentions, and which could have been as well demonstrated by a cleaner one. If this be so the petitioner is glad she was there, and discovers an additional reason why she should be admitted.

His honor gives, as a reason why women should not be permitted to practice law, the fact, that in their business relations they would meet with so many bad men, whose society would be unpleasant and contaminating. And yet, according to his theory, these very women should marry these men; and should even be forced to marry them, by being shut out from the higher class of employment, lest possibly they might seek a way of escape!

The honorable judge claims that the practice of law is a peculiarly masculine prerogative, and that a woman forsakes the ways of her sex for the ways of his, in adopting that profession. So, once, authorship was considered a masculine employment. As recently as within the last century. Miss Mitford regretted the necessity of being obliged to resort to so peculiarly masculine a vocation for a livelihood, and declared that she would gladly engage in scrubbing, or any "more feminine" occupation, if it would pay her as well!

Education was once considered a peculiarly masculine prerogative. In ancient Greece, an educated woman was considered "unsexed;" she had ."forsaken the ways of" her "sex," "for the ways

of" man's; and was therefore considered unworthy his respect; as now his honor insinuates a woman learned in the law must needs be. But an advanced civilization demands higher culture for Woman, and now she is welcomed in literature and on the rostrum, as she will soon be within the bar; a co-worker with man in the advancement of justice and righteousness.

That a large proportion of women will marry, and will become too largely occupied with home duties to devote, themselves to professional labor, is undoubtedly true. It is equally true that a large proportion of men will remain outside the professions, and equally desirable that they should, else who would be our farmers, mechanics ,merchants, and laborers? These matters will adjust themselves, only give full scope to labor, and fair competition.

If nature has built up barriers to keep Woman out of the legal profession, be assured she will stay out; but if nature has built no such barriers, in vain shall man build them, for they will certainly be overthrown.

Lavinia Goodell. Janesville, Wis., March 20, 1876.