

HOW IT LOOKED TO A LAWYER HALF A CENTURY AGO.

Timothy Walker, one of the professors in the Law Department of the Cincinnati College, between 1830 and 1840, delivered a course of lectures there on "American Law," which, in 1837, were published in book form, and are an excellent condensed account of the then existing law and practice. In the lecture on "Husband and Wife," under the sub-title, "Political Condition of Females," he says: "With regard to political rights, females form a positive exception to the general doctrine of equality. They have no part or lot in the formation or administration of government. They cannot vote, nor hold office. We require them to contribute their share in the way of taxes, to the support of government, but allow them no voice in its direction. We hold them amenable to the laws when made, but allow them no share in making them. *This language applied to males would be the exact definition of political slavery; applied to females, custom does not teach us so to regard it. Perhaps it would be difficult to deduce from, any abstract reasoning, the justice of making this their political condition.* But we know that it always has been what it now is, and there is no prospect of changing it; and probably the most refined and enlightened of that sex would be the last to desire a change which would involve them in the turmoil of politics."

The italics are mine. This is a plain statement of the case from a dispassionate law writer, made before the commencement of the "Woman's Rights" movement. When Blackstone wrote, under a monarchy, after laying down the general principles as to freedom and equality always given by fundamental law writers, he found it necessary to qualify them somewhat, in deference to the king; which he did with more heartiness and by arguments more plausible than the above. The only arguments which could be found to justify the "political slavery" of Woman, by an able American law-writer, were, that it had "always been so," that there was no prospect of a change, and that probably the best women would be the last to desire such a change! Since Walker wrote, the best women are coming to see that they do desire just that very change, and there is a prospect that the change will be made. Is the remaining argument of Mr. Walker that it has always been so, sufficient objection to the change being made? Further on, under the subtitle, "Married Women," Mr. Walker says: "When a woman marries, we call her condition coverture, and speak of her as a feme covert. The old writers call the husband baron, and sometimes, in plain English, lord. In fact, the scene is now entirely changed. The merging of her name in that of her husband is emblematic of the fate of all her legal rights. The torch of Hymen serves but to light the pile on which these rights are offered up. The legal theory is that marriage makes the husband and wife one person, and that person is the husband. He is the substantive, and she the adjective. In a word, there is scarcely a legal act of any description which she is competent to perform. The common reason assigned for this legal disfranchisement of the wife is, that there may be an indissoluble union of interest between the parties. In other words, lest the wife might be sometimes tempted to assert rights in opposition to her husband, the law humanely divests her of rights. For the arguments by which this doctrine is vindicated, I must refer you to the books. It is my province to state what the law is, and not to justify it.

After summing up the legal disabilities of married women, Mr. Walker adds: "The condition of the wife may be inferred from what has already been said. She is almost entirely at the mercy of her husband; she can exercise no control over his property, or her own. . . . She has no power over his person, and her only claim upon his property is for a bare support. . . . In Ohio, but hardly anywhere else, she is allowed to make a will, if haply she has anything to dispose of. . . . I have thus taken a general

view of the relation of husband and wife; and the sum is this: Woman, married or single, has no political rights whatsoever. While single, her legal rights are the same as those of man. When married, her legal rights are chiefly suspended. When she becomes a widow, those rights revive, and liberal provision is made for her support; but from first to last, man has the advantage. Blackstone closes his chapter with an eulogium on the laws of England for their liberality towards Woman. How little this is deserved, is manifest from what has already been said. Our law is vastly more liberal towards Woman than the English law; yet even here she has too much reason to regret that her lot has not fallen under the dominion of the civil law. I can see neither policy, justice nor humanity in most of the legal doctrines with respect to married women."

Among his "Concluding Reflections," in making suggestions for improvements in the law, Mr. Walker says: "As to married women. On this subject reform is loudly called for. There is no foundation in reason or expediency, for the absolute and slavish subjection of the wife to the husband, which forms the foundation of her present legal relations. The law ought to furnish some means by which, in case of emergency, she can protect herself from the utter ruin in which he now has the power to involve her. Were Woman, in point of fact, the abject thing which the law in theory considers her to be when married, she would not be worthy of the companionship of man."

This is not a woman's rights speech: but the cool, carefully-weighed expression of a law professor to a class of students more than forty years ago, in a course of dissertations on legal principles; and Mr. Walker is not alone in his protest against the subjection of Woman. Judge Christian, in his notes on Blackstone, in 1803, Reeve in his "Domestic Relations," and Parsons in his "Laws of Business," bear similar testimony. It is left to a professedly woman's rights religious periodical in .1879, under the head of "The Sunday School," to exhort wives to "submit themselves to their husbands," because "in all relations there must be one head—a two-headed creature is always a monstrosity. In the household there must be one head, namely the husband"; and that the wife, if she be wise, will submit, "rather than have strife." The able law-writers to whom I have referred, see no such necessity. Looking at it from a purely legal stand-point, they see only "political slavery," degrading subjection and an opportunity for the exercise of tyranny which the law ought not to permit. Had Woman "submitted" all these years, "rather than have strife," would the laws ever have been modified as they have been? We have to thank the women who preferred "strife" to submission on such degrading terms, that married women to-day are not the abject slaves they were fifty years ago, and that men today have wives "worthy the companionship" of freemen. We may be thankful also that our lawyers have a higher sense of justice than our clergymen, and so have aided women in their struggle to come up higher. If the study of theology does not cultivate the sense of justice, we would advise our ministerial brethren to take a course of law

Lavinia Goodell. Janesville, Wis., Oct. 1, 1879.