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WOMEN'S RIGHTS IN WISCONSIN

BY MABEL SEARCH, A.B., '26

Wisconsin is the first state in the union to give women equal rights with men under the law. The equal rights bill was passed June 12, 1921, after a campaign by the Wisconsin branch of the National Woman's Party, which, after the passage of the federal suffrage amendment, inaugurated a movement to remove legal disabilities of women.

Following is a statement by the National Woman's Party regarding the law:

Wisconsin was the first state in the union to take the pioneer step of granting complete equality before the law to its women. It stands in relation to this new phase of the woman movement in the same position as Wyoming, the pioneer suffrage state, stood toward suffrage.

Under the laws of Wisconsin today, women stand upon the same basis as men, freed from the ancient discriminations and disabilities which still fetter them in other states. Centuries of legal precedent and tradition, built upon the conception of women as inferior beings, and sanctioning with the majesty of the law the subjection of one-half of the race, have been overturned by Wisconsin with one clean stroke.

The above leaves no doubt as to the interpretation of the measure in general terms by its sponsors.

The Wisconsin law, Chapter 529, Laws of 1921, follows:

SECTION 1. Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children and in all other respects.

The various courts, executive and administrative officers shall construe the statutes where the masculine gender is used, to include the feminine gender unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare.

The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purposes of this statute.

SECTION 2. Any woman drawn to serve as a juror, upon her request to the presiding judge or magistrate before the commencement of the trial or hearing, shall be excused from the panel or venire.

No effort was made by the sponsors of the law to have prior statutes dealing with the rights of women repealed, or to revise these statutes to conform to the new policy. And, since the law is general in terms—its sponsors call it a blanket measure—it remains to be seen which of the prior statutes are repealed by

implication. Therefore to apply the law specifically is a matter which only time and experience will settle definitely.

The rights bestowed on unmarried women are chiefly those of holding office and performing jury service. Previous legislation had given them freedom of contract. Married women were denied this right on the theory of protecting the wife's separate estate.

For example, it was impossible heretofore for a wife to sign as her husband's surety on a bond or note. The contention was that by persuasion or through duress the wife might become the guarantor of her husband's debts. Her separate estate would be decreased or possibly wiped out in the event of his creditors' pressing the claims. The new law gives married women the right to contract freely and also ends this protection. Whether the new condition will work more hardships than benefits remains to be seen.

It has been suggested that the phrase "special protection and privileges" might limit the scope of a married woman's right of freedom of contract as a means of protecting her separate estate. However, since the law gives women equal rights with men in freedom of contract, it would seem impossible to abridge this right even for the benevolent purpose of extending to her under the new law a privilege which she formerly had.

"Special protection and privileges" can mean nothing but the shield thrown about women under the police power of the state, such as minimum wage laws, limiting hours of labor, excluding women from certain hazardous occupations, etc., the law specifying that the protection and privileges women enjoy for the general welfare shall not be taken from them in the process of equalizing the legal status of men and women.

Whether this special protection will be challenged by employers on the basis of the new law is a matter for the future. The chairman and secretary of the Wisconsin Industrial Commission state that no attempt has been made in nearly a year since the law has been on the statute books to nullify these measures, and that none is anticipated.

Wisconsin's record as a state in which labor legislation applying to women is generally upheld may be the basis for this confidence.

F. M. Wilcox, chairman of the commission, says:

. . . as to the effect of Chapter 529, Laws of 1921, upon the laws which have been enacted for the protection of women employees, . . .

this commission believes that this chapter has no effect whatsoever. Chapter 529 is entitled "An act . . . to remove discriminations against women and to give them equal rights before the law." The laws which Wisconsin has had on its statute books for some time for the protection of women employees, such as the hours of labor law and the minimum wage law, do not "discriminate against women," but rather protect and give them special privileges.

This commission has enforced the laws which give a special measure of protection to women employees since Chapter 529 became effective in the same manner as heretofore. A considerable number of employers have been called to account for violations of these laws. No employer or his attorney has ever urged, however, that Chapter 529 has set aside the women's hours of labor law or the minimum wage law. This fact we think significant, especially in view of the fact that articles have appeared in the east which claim that the women's rights bill has swept away all special legislation for the protection of women. This is a claim which only people who know nothing of our laws have urged.

The National Consumer's League—an organization devoted to the betterment of working conditions for women, is not so sanguine. Its secretary, Florence Kelley, discussing generally the national movement for women's rights laws, and giving specific attention to the Wisconsin law, says:

If women are subject to the *same* freedom of contract as men, will not women wage-earners lose the statutory eight-hour day, rest at night, and one day's rest in seven, which they now have under statutes that, *pro tanto*, limit their freedom of contract? Could women get for themselves an eight-hour law or a minimum-wage commission in a state where these do not yet exist, and where working men do not care to get them because they prefer for themselves negotiations backed by organizations and strikes?

Why should wage-earning women be thus forbidden to get laws for their own health and welfare and that of their unborn children? Why should they be made subject to the preferences of wage-earning men? Is not this of great and growing importance when the number of women wage-earners, already counted by millions, increases by leaps and bounds from one census to the next? And when the industries involving exposure to poisons are increasing faster than ever? And when the overwork of mothers is one recognized cause of the high infant death-rate? And when the rise in the mortality of mothers in childbirth continues?

If there were no other way of promoting more perfect equality for women, an argument could perhaps be sustained for taking these risks. But why take them when every desirable measure attainable through the blanket bill can be enacted in the ordinary way?

SECTION 3. This act shall not affect laws regulating the employment of women in industry. [The wording of this clause differs from state to state in the blanket bill.]

Concerning legislative innovations, the important point is not the promises made by the advocates *but what the bill itself says* and what

experience has taught the people who will be affected by it to expect. Until the items of the blanket bill have been passed upon by the courts, what greater value than patent-medicine advertisements can any claims for the safe-guarding clause have?

The proponents point to the Wisconsin law enacted a year ago as having wrought no harm. But new laws are not like bombs. They do not explode. Women cap-makers can never forget that the Sherman law had been on the statute books for years and wage-earning men and women had been assured that it could never apply to them. In the end, however, under a decision of the United States Supreme Court, that anti-trust law was the cause of the loss of the homes of hundreds of working-class families in a single state and a single industry.

For women new to the field of legislation, however, the term "safe-guarding clause" has an attractive sound. They do not know that in the processes of enactment, slow and circuitous (or like a lightning flash in the closing hours of the session), nothing is more easily lost than a safe-guarding clause.

In Maryland the blanket bill recently passed the house of delegates without a repealing clause. If the bill were so enacted, would it (by implication) amend or repeal other laws? Opponents of the bill would argue that any attempted amendment of the existing law is futile without a clear statement of the laws to be changed and their wording as amended. Until the courts had spoken, who could know what the law actually was?

On the other hand, if the blanket bill *with* its sweeping repealing clause should pass unchanged, sooner or later the courts would have to decide whether any laws had been nullified and, if so, which ones. If it should then be held in spite of the safeguarding clause, as might readily happen, that the wage-earning women's protective laws had been repealed, in some states the constructive work of years would be undone. The police power it is true would remain, but fresh legislation would be required to give it life. The police power does not act spontaneously. As a part of a blanket bill, the effect of a sweeping repealing clause is incalculable.

The following are possible questions which will be presented to the courts for solution as the efforts to adjust the law to conditions progress:

May a husband, dependent on his wife for support, obtain alimony in case of divorce?

Where husband and wife have separated or are divorced, is the mother jointly responsible with the father for the support of children, since women now have equal rights with men in the care and custody of children?

Can the father still claim the earnings of a minor child or do they belong jointly to father and mother? Must father and mother sue jointly for injury to a child?

Since the wife now has the right to choose her residence for voting purposes, has the husband still the right to fix the family

domicile? If the wife chooses one voting district and the husband another, is he obliged to maintain her during the time she is domiciled in her district? Can he sue for separation or divorce if the wife chooses a domicile other than his?

Does freedom of contract give her the right to contract with reference to her dower rights? May she contract with her husband with reference to such right? Just how far does this clause go?

Will the clause "holding and conveying property" make any change in the wife's property rights?

Following are comments on the law made by Wisconsin executive and judicial officers at the request of the National Woman's Party:

Gov. James J. Blaine said:

You ask in your letter of January 12 that I give you my opinion as to the value of the Wisconsin equal-rights law, present and prospective, in the light of our experience. . . .

There are two ways by which discriminations against women may be removed and by which equal rights before the law may be conferred. One method is by a general enactment, such as the law to which I refer, and the other method is by amending a multiplicity of special statutes on a variety of subjects treated in the statutes. The first method is simple and direct; the second is cumbersome, complicated, and inconsistent with the amendment to the federal constitution granting full privileges and rights by the fundamental law.

Our experience, therefore, convinces us that the general enactment is in complete harmony with the federal amendment, and directly effective in establishing full equality of men and women before the law.

C. H. Crownhart, justice of the state supreme court, said, prior to his appointment:

. . . . This law works no revolution, but rather an evolution whereby women gradually come into their own.

They are beginning to serve on juries with satisfaction to the public generally. There are no disturbances in the home or in marriage relations because of the law. As the law becomes more generally known it will be beneficial in its operations. The women make the home and this law will help them establish and keep a home. It is a relic of barbarism that leads some to believe that a husband, no matter how great a tramp he may be, should start out on a vague quest and call upon his wife like a squaw to pack her papoose on her back and follow.

The law will bring about a greater and fairer understanding of domestic relations both by the parties and by the courts. The Wisconsin law has proved that we usually suffer more from the fears of what may happen than we do from anything that really does happen. It is a good law. Time may improve it.

Circuit Court Judge Oscar M. Fritz, Milwaukee, says :

No litigation involving the Wisconsin equal rights law has been brought to my attention. I see no reason why the law should not accomplish the results desired by its sponsors. Its general terms are preferable to attempts at detailed specification.

Circuit Court Judge E. Ray Stevens of the Ninth Judicial District of Wisconsin says :

I have had no occasion to apply the Wisconsin equal rights law, aside from having women on our jury panel. I was pleased to note that women made very attentive and careful jurors, being the peers in every way of the men on the panel. They were as readily accepted as jurors as were the men.

I believe that a general statute like our Wisconsin act is better than a law which attempts to amend all existing statutes affecting women. In every such attempt at amendment, it would be well nigh impossible to find and properly amend every provision of statute that should be amended to make a complete and harmonious statute. By enacting a single law clearly evidencing the legislative intent, it must be held that all conflicting acts existing at the time of the passage of such general act are either repealed or amended so as to bring all existing laws into harmony with the legislative intent expressed in the general act.