The Development of Woman's Rights in the Law

W. D. Thompson
THE DEVELOPMENT OF WOMAN'S RIGHTS IN THE LAW

W. D. THOMPSON*

To the end that proper appreciation may be had of the great advancement of woman in modern times in a social and material way we should examine briefly into her status in the past.

One of the fundamental rules of human conduct impressed upon the Jews as they were trekking back toward the Promised Land was "Honor thy father and thy mother, that thy days may be long upon the land which the Lord thy God giveth thee."

When I say the land of their fathers, I think I make this statement advisedly. Recent excavations and research disclose that the region we know as Syria and Palestine was inhabited by the Semitic race thousands of years before the Israelites under Moses and Joshua are said to have fled from Egypt to the land of Canaan.

It has since developed that many of the characters described by Milton in his first book of Paradise Lost as pagan gods were kings and queens in ancient Syria and who were subsequently deified and whose worship was subsequently impressed upon the inhabitants of the valley of the Tigris and Euphrates upon the conquest of that region by the Semitic race almost before the dawn of history.

The point I wish to impress upon you is that from the beginning of recorded time down to the present day the Semites have treated their women as substantially equal in all respects to men. The biblical book of Esther is no doubt the reduction to literary form of an ancient legend of Ishtar, one-time queen of Aleppo in Syria, and Mordecai, who is substituted for Marduk, the savior, and in fact the substitute for Christ, in the ancient Babylonian worship, embellished, however, to meet the conditions existing contemporaneously with the writer of this book. The fact that way back before the dawn of history the Semites permitted a woman to rule over them at all is the significant fact showing the respect in which womankind was held.

Another illustration is Semiramis, a queen and afterwards a goddess of the ancient Assyrians; and Homer, in his account

*Member of Racine County Bar.

†Paper read before the Racine County Bar Association.
of the siege of Troy, tells us how Penthesilea, with a troop of Amazons, came from their country somewhere in the region of the Black Sea, to the assistance of old King Priam.

Experience has largely proven that many of the legends and fairy tales have at least part of their foundation in fact, and it would not be at all surprising if there did exist, somewhere in the region of the Black Sea, in ancient times a country governed by women, somewhat as the savage kingdom of Dahomey in central Africa.

Among the ancient Greeks wisdom was deified in the person of Minerva and the arts and sciences in the Muses.

The great majority of those who hear me are of the Germanic race, which includes not only Germans, but the Scandinavian and English races, and there is a very strong strain of Germanic blood in both the Scotch and the Irish.

Gibbon, in his *Decline and Fall of the Roman Empire*, treats of the standing of womankind among the ancient Germans as follows:

"The Germans treated their women with esteem and confidence, consulted them on every occasion of importance, and fondly believed, that in their breasts resided a sanctity and wisdom, more than human. Some of these interpreters of fate, such as Velleda, in the Batavian war, governed, in the name of the Deity, the fiercest nations of Germany.—Tacit. *Hist.* iv. 61.65. The rest of the sex, without being adored as goddesses, were respected as the free and equal companions of soldiers, associated even by the marriage ceremony to a life of toil, of danger, and of glory. In their great invasions, the camps of the barbarians were filled with a multitude of women, who remained firm and undaunted amidst the sound of arms, the various forms of destruction, and the honorable wounds of their sons and husbands. Fainting armies of Germans have more than once been driven back upon the enemy, by the generous despair of the women, who dreaded death much less than servitude. If the day were irrecoverably lost, they well knew how to deliver themselves and their children, with their own hands, from an insulting victor."

"Heroines of such a cast may claim our admiration; but they were most assuredly neither lovely, nor very susceptible of love. Whilst they affected to emulate the stern virtues of man, they must have resigned that attractive softness in which principally consists the charm of woman. Conscious pride taught the German females to suppress every tender emotion that stood in competition with honor, and the first honor of the sex has ever been that of chastity. The sentiments and conduct of these high-spirited matrons may, at once, be considered as a cause, as an effect, and
as a proof of the general character of the nation. Female courage, however it may be raised by fanaticism, or confirmed by habit, can be only a faint and imperfect imitation of the manly valor that distinguishes the age or country in which it may be found." Vol. I, p. 179, 180.

The foregoing was notably illustrated in the war between Caesar and Ariovistus, king of the Suevi, who, it will be remembered, had not been under cover or under a roof for fourteen years. These tawny barbarians had courage equal, if not greater than the Romans, but lacked both the arms and the discipline. After the men were all killed off, the women sent word that they would surrender on condition that they be made slaves of the Vestal Virgins. This was denied, with the result that practically the entire forces of Ariovistus, numbering two hundred fifty thousand men, women and children, were slaughtered, the final slaughter being committed by the women of their children and themselves.

In his description of the inhabitants of ancient Gaul, Caesar relates that the bravest of these were the Belgians, horum omnium fortissimi sunt Belgae. These same Belgians had some centuries previous crossed the British Channel and colonized southeastern England. They made head against the mighty Caesar and drove him out of Britain.

During the second invasion of Britain by the Romans, commencing about 44 A.D., it is related that Boadicea, the queen of the Iceni, gathered together the warriors of the various tribes and almost expelled the Romans from Britain, burning a great many of the cities they had founded and slaughtering some seventy thousand Romans and their allies before they were finally overcome by Suetonius.

The Anglo-Saxons, being a branch of the Germanic race, no doubt treated their women with the same kindness with which Tacitus says the ancient Germans treated theirs. We are all familiar with the story related in the Saxon Chronicle of King Alfred being called down by the peasant woman for not watching the cakes, while he was hiding from the Danes, who had subjugated his kingdom.

With the Norman Conquest came the feudal system, and it would seem that with the feudal system came the subjection of womankind to the domination and control of men, and this subjection continued for about nine centuries.
An unmarried woman, we may safely assume, had, and now has the same property rights as men. Upon her marriage, however, here are some of the things that happened to her in the good old days of Blackstone, who wrote of the laws of England as they were in 1765.

"By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything; and is therefore called in our law-French a Feme-covert, and her condition during her marriage is called her coverture.***

"For this reason, a man cannot grant anything to his wife, or enter into covenant with her; for the grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself; and, therefore, it is also generally true, that all compacts made between husband and wife, when single, are voided by the intermarriage.***

"If the wife be indebted before marriage, the husband is bound afterwards to pay the debt; for he has adopted her and her circumstances together. If the wife be injured in her person or her property, she can bring no action for redress without her husband's concurrence, and in his name, as well as her own; neither can she be sued, without making the husband a defendant.

"The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer." Vol. I, p. 746-750.

A married woman was also incapable of making a will, or a deed or other conveyance or transfer of land or personal property. She was a special ward of the court as well as of her husband, and the arm of the law seems to have extended to her substantially the same protection as to idiots, persons of nonsane memory, infants and persons under duress. Crimes were presumed to be under duress of the husband.

As one of the methods of acquiring property, Blackstone recognizes the following:

"A sixth method of acquiring property in goods and chattels is by marriage; whereby those chattels, which belonged formerly to the wife, are by act of law vested in the husband, with the same degree of property and with the same powers, as the wife, when sole, had over them."
“This depends entirely on the notion of an unity of person between the husband and wife; it being held that they are one person in law, so that the very being and existence of the woman is suspended during the coverture, or entirely merged or incorporated in that of the husband. And hence it follows, that whatever personal property belonged to the wife, before marriage, is by marriage absolutely vested in the husband.” Vol. 2, p. 659.

Such being the situation following marriage, it is obvious that women of property were very vigorously sought after and a situation grew up which required the attention of the law-making power. We quote again from Blackstone, as follows:

“The second offence, more immediately affecting the personal security of individuals, relates to the female part of his majesty's subjects; being that of their forcible abduction and marriage; which is vulgarly called stealing an heiress. This was made felony without benefit of clergy, which is taken away from all such felons, who shall be principals, procurers, or accessories before the fact.” Vol. 4, p. 265.

The common law of England was imported into America by the colonists from Great Britain and Ireland, also many of the acts of Parliament enacted prior to the first permanent English settlement at Jamestown in Virginia, A. D. 1607. The situation was, like African slavery, so manifestly unjust that it became intolerable, and the first half of the nineteenth century witnessed the gradual emancipation of women in so far as property rights are concerned.

In 1850, two years after Wisconsin became a state, our legislature passed an act known as the Married Woman's Property Act. Chap. 44 Laws of 1850. Under this and subsequent amendments, married women could own real estate of every description, and the rents, income and profits thereof were not subject to the disposal of the husband, but were her sole and separate property as if she were unmarried.

By her marriage she did not confer upon her husband any interest in her real estate or personal property, or in the rents, issues or profits thereof. Neither her property nor its income was or is subject to his debts, but she has the sole right of disposition.

A married woman, equally with a single woman, may receive by inheritance or by gift or under a will from any person and hold to her own separate use, and give away, sell or will away her real estate and personal property, as well as that held in joint tenancy with her husband. She has the same right of disposition
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of the income and profits from any such property. Not only that, but since 1895 she could transfer her property to her husband and her husband could transfer his property to the wife.

A married woman is entitled to her own individual earnings, except those accruing from labor performed for her husband or in his employ or payable to him, and her earnings outside of employment by or labor performed for her husband, are her separate property not subject to her husband's control or liable for his debts.

A married woman may also transact business in her own name, in event her husband shall have deserted her, or shall, because of drunkenness, profligacy or any cause, neglect or refuse to provide for her support or for the support and education of her children; and her earnings derived from such business belong to her and are not in any manner subject to her husband's control or interference or liable for his debts.

A married woman may also sue in her own name and have all the remedies of an unmarried woman in regard to her separate property or business, and to recover the earnings secured to her under the Wisconsin laws. She is also liable to suit in respect of her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried.

A married woman may maintain an action in her own name and for her own benefit for the alienation and loss of the affection and society of her husband, also for injuries to her person and character, and any recovery belongs to her.

You will note the quotation from Blackstone to the effect that the husband married not only the woman, but her debts, and upon marriage became obligated therefor. It can very readily be seen that under the old law the rich and unsophisticated youth was as much liable to be overreached and mulcted of his property and estate through debts of his wife, as the woman was to lose her property upon marriage, to her husband. But the husband is no longer liable for the payment of the wife's antenuptial debts; but she shall be liable to all remedies for the recovery of such debts to be enforced against her and her separate property, as if she were unmarried. There is no statute of limitations between husband and wife.

Married women are likewise favored in the matter of insurance upon the lives of others. She has the right to insure the life of
her husband, son or other person, and have the loss payable to her; "and any person, whether her husband or not, effecting any insurance on his life or the life of another, may cause the same to be made payable to or assign the policy to a married woman or to any person in trust for her or her benefit; and every such policy payable to or for the use and benefit of a married woman shall be the sole and separate property of such married woman and shall inure to her support, use and benefit, and that of her children, and in case of her surviving the period or term of such policy, the amount of the insurance shall be payable to her or her trustee for her own use and benefit, free from control, disposition or claims of her husband and of the person effecting or assigning such insurance, and from the claims of their respective creditors." She is thus protected under life insurance in an amount of which $150 will pay the annual premiums. And with the consent of the person making the policy, she may assign, encumber or otherwise dispose of the insurance.

Any married woman of the age of eighteen years and upwards may dispose of her property by last will and testament, and this applies both to real estate and personal property. An unmarried woman must have attained the age of twenty-one years.

The widow always had her dower in the lands of her deceased husband, which formerly consisted of a life estate in one-third of the land or real estate or the right to one-third of the net income thereof. Since August 31, 1921, the widow's dower is a one-third part of all the lands her husband owned during marriage, unless she is lawfully barred of her dower. In case of the sale of the homestead, the widow has one-third of the proceeds of the sale, but she cannot have both dower and homestead rights at the same time.

A non-resident married woman, on the other hand, is entitled to dower only in the lands of her husband in Wisconsin which he owned at the time of his death. This right of dower attaches also in lands which have been exchanged, but the widow must elect in which land, that is to say, whether the land originally owned by her husband or the new land taken by him in exchange, she will claim her dower, and this election must be made within one year after the death of her husband. The right of dower attaches to land which the husband may have mortgaged before his marriage as against every person, except the mortgagee or the one who owns the mortgage on the property. But dower
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does not attach to lands bought during the pendency of the marriage relation, whereof a mortgage is given to secure purchase money or part of the purchase price, but it does attach to any surplus which may accrue above the mortgage on foreclosure and to the entire property and interest therein, if the mortgage is paid. Dower may be barred by an agreement called a jointure, which must be made with the husband before marriage, and such jointure, that is, such settlement upon the wife, must at least be a life estate in some land or real estate to take effect immediately upon the death of her husband.

Furthermore, the widow's right of dower is barred by a provision which may be made for her benefit in the will of her husband, provided she elects to take under the will, or rather she does not elect to take under the law. If she elects to take under the law, the provisions for her in her husband's will are void, but under the law she would be entitled to her dower right in the real estate outside of the homestead, her homestead right for life or until remarriage in the home, and to one-third of the personal property.

The widow will be presumed to take under the will unless within a year after the death of her husband she files in the County Court a notice in writing to the effect that she elects to take the provisions made for her by law, in which event she will be entitled to share in the estate of her deceased husband as above stated and to the same extent as if he made no will at all, but died intestate, as we term it. The homestead cannot be sold by an executor without the consent of the widow, and in case of its sale the widow is entitled to her one-third dower interest in the net proceeds of the sale.

In this connection, we might add that the husband, on the death of his wife, shall hold the lands of which she died seized or possessed and which are not disposed of by her last will and testament, for his life, as a tenant therof by the courtesy, provided that if the wife at her death shall leave issue by any former husband, to whom the estate might descend, such issue shall take the same, discharged from the right of the surviving husband to hold the same as tenant by the courtesy, and this right of courtesy, under the laws of 1921, which may accrue after August 31 of that year, becomes extinguished upon the remarriage of the husband. If the husband dies without leaving any will, his real estate under the present law would descend one-third to the widow and the
remainder to any child or children, whether male or female, all children sharing equally. If there be no child or children and no will, the entire real estate descends to his widow; and if a woman dies without leaving a will, leaving no children, her estate descends to her surviving husband.

The homestead of a deceased husband descends free of all judgments and claims against such deceased owner or his estate, except mortgages lawfully executed thereon and except laborers' and mechanics' liens, if he leave no children, to his widow. If he leaves a widow and children, to his widow during her widowhood, and upon her marriage or her death, to his heirs at law. In this connection, we might observe that as to creditors, the value of the homestead exemption is limited to $5,000 over and above any mortgages that may be thereon, because the owners of the home are presumed to have mortgaged the non-exempt part thereof. But when we treat of the homestead, in the laws of descent, there is no such limitation. If the homestead is worth $100,000, the widow taking under the law, has the right to the use of the homestead for her natural life or until she shall remarry. In event of sale of the homestead under mortgage foreclosure, the widow is entitled absolutely to one-third of any surplus remaining after payment of the mortgage debt, interest and costs.

As to insurance which a married woman may have: She is entitled to all moneys arising on any policy of insurance payable to her, up to the amount of $5,000, if the person insured pays the premium, but to any amount, if the premiums are paid by some one else, where the insurance is taken out in some benefit or fraternal organization. If taken in an old line company, the amount of the insurance is limited, as before stated, to such sum as may be purchased by $150 annual premiums. The widow is always entitled to any pension which may have accrued to her deceased husband while employed in any department of the government where pensions are allowed. But such amounts are not assets in bankruptcy.

Allowances to Widow by County Court on Administration of Husband's Estate. The County Court, which has jurisdiction of all matters relating to the estates of decedents, is required by law to allow the widow certain property out of the personal estate of her husband, whether disposed of by will or not.

Thus, the widow shall be allowed all her articles of apparel
and ornaments, also all wearing apparel, family pictures and ornaments of the deceased, except such as may have been specifically bequeathed by the deceased, also the household furniture of the deceased, also all provisions and fuel on hand provided for family use, also other personal property to be selected by her, not exceeding in value $200. This allowance shall be made whether the widow waives or accepts the provisions made for her in the will of her husband, or when no provision is made for her, or in event the husband dies without leaving any will.

The widow and minor children constituting the family of the deceased husband shall have such reasonable allowance out of the personal estate or the income of the real estate of the deceased as the County Court shall judge necessary for their maintenance during the progress of the settlement of the estate, but never for a longer period than until their shares shall be assigned to them; and, in case of an insolvent estate, not longer than one year after the appointment of the executor in case of a will, or administrator, if no will shall have been made. The court is also authorized to assign the residue or remainder of the estate, after the payment of funeral expenses and expenses of administration, to the widow, for her support and that of the minor children, where the residue or remainder does not exceed $1,000. If the residue exceeds $1,000, all the excess or as much as is needed must be applied to the payment of the husband's debts. All of the residue and remainder in excess of the amount required to pay debts, funeral expenses, expenses of administration, inheritance and income taxes goes to the widow and children. Where there is only one child, the widow gets a half. If there be more than one child, the widow gets a third. Under the old law, the widow got only a child's share, and the more children she had the smaller her share. This, however, has been corrected so that she gets at least a third in any event. As before stated, if there are no children and no will, the widow would get the entire estate.

Since the passage and adoption of the Nineteenth Amendment, which provides: "The rights of citizens of the United States to vote shall not be abridged by the United States or by any state on account of sex," our legislature passed a law which reads as follows:

"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 judicial officials 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."

"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." Section 6.015 Wisconsin Statutes of 1921.

The common law disability of a married woman to become a surety for a third person is held by our Supreme Court not to be a protection or privilege enjoyed for the general welfare, but is a limitation upon her freedom of contract, not resting equally upon men, and this limitation has been removed by Statutes 1921, Section 6.015, and she may now make herself liable as a surety to the same extent as a man could do under the same or similar circumstances.

In speaking of the married women's property acts, our court, in the case of First Wisconsin Natl. Bank vs. Jahn, 179 Wis. 117, 121, 127, per Rosenberry, J., said:

"It is argued that it is in the interest of the general welfare that a married woman should not have the capacity to become a surety for the debt of another. There is a sense, of course, in which all legislation, at least all wise legislation, is in the interest of the general welfare. The term is here used in a narrower and more limited sense. The term 'general welfare' is used in this section as referring to those statutes which are enacted in the exercise of the police power and are intended to promote the health, morals, and general well-being of the community at large. There are many statutes relating mainly to hours of work, conditions of employment, sanitation, and other related subjects which are enacted in the exercise of the police power for the purpose of promoting the general welfare, and under and by virtue of which it may be said as in Miller vs. Wilson, supra, that women enjoy certain protection and are granted certain privileges. It is the rights and privileges granted under this class of statutes to which reference is made in the second clause of the section. No amount of legislation, either statutory or constitutional, can destroy the
fundamental differences of sex. All wise legislation at least must recognize established indisputable biological facts. While there is a continual reference in the earlier decisions to sex, drawn from a time when social and legal distinctions were based largely upon physical prowess, no one is now heard to contend that because there are fundamental differences between the sexes either sex is for that reason inferior or superior to the other. By recent legislation in this country the sexes have been brought to an absolute equality of right and privilege before the law, but that fact does not and should not strike down sex as a basis of classification in the enactment of laws relating to the health, morals, and general well-being of our people.

"This statute, as are other statutes relieving married women from disabilities incurred by marriage at common law, is remedial in its nature and should be fairly and liberally construed to effect the purpose intended. If experience proves that it is unwise for married women, in view of their actual situation, to be subject to the importunities of their husbands and others in the matter of the disposition of their property and the use of their separate estates, no provision of the constitution will stand in the way of the enactment of laws limiting her right of contract. This law, broad and general though it is, does not exhaust legislative power in this field. No doubt it is but the beginning of a legislative program to effectuate in a broad and liberal way the more modern conception of the place of women in the social, economic, and political life of the country.

"We express and are called upon to express no opinion as to the wisdom of this legislation. As this court has said many times over, that is a matter with which the courts have nothing to do and one resting wholly in the discretion of the legislature. In this case the appellant may be deprived of a substantial part of her separate estate in order that the debt of another may be paid. She may receive no benefit or the benefits may be great. The record discloses nothing but the bare fact that she became a surety. This she had a right to do and she must endure the consequences. It is natural that an effort should be made to resist the application of the statute in a case where it may work a hardship. With the consequences to her of the act of the appellant we are not concerned, that being a matter which she determined for herself when she endorsed the note. The law should not be construed away in order to sustain preconceived notions as to the wisdom of conferring upon married women civil and political rights equal to those enjoyed by men.

"It is not even contended here that the legislation under consideration in any way violates any provision of the constitution. It is clearly within the legislative field, and it is the duty of the courts to so construe and apply it as to confer upon women, including married women, all the rights and privileges under the
law now enjoyed by men. No doubt some difficulty will be encountered in the application of this statute to the law generally. These difficulties, however, will not be insurmountable. In practice they may prove to be not even formidable. The intent of the legislature is clear and it is manifestly the duty of the courts to effectuate that intention.

"We therefore conclude that the common-law disability of a married woman to become a surety for a third person is not a protection or privilege enjoyed for the general welfare, but is a limitation upon her freedom of contract, not resting equally upon men, and that that limitation has by the enactment of sec. 6.015, Stats., been removed, and that she may, therefore, make herself liable as a surety the same as a man could do under the same or similar circumstances. The disabilities which occasioned the interposition and protection of courts of equity no longer exist, and the liabilities of a married woman, contractual or otherwise, may be enforced as similar liabilities may be enforced against men. She is therefore liable in an action at law."

I feel it is necessary to call attention to a great advancement in the law relating to the custody of children. Under the old law the father had the primary right to the custody of the minor child, unless for some peculiar reason the court deemed it for the best interests of the child to award its custody elsewhere.

This was changed in 1921, so both the father and mother, if living together, and if living apart, then either, as the court may determine for the best interests of the child, and in case of the death of either parent, the survivor thereof, being themselves respectively competent to transact their own business and not otherwise unsuitable, shall be entitled to the custody of the person of the child and the care of its education. If both father and mother are incompetent or unsuitable, a third person appointed by the court shall have the custody of the person, as well as of the estate of the child, and the care of its education. Under the present law both father and mother have the right to appoint by will a guardian or guardians of the estate left to any child.

In actions for divorce, it is the duty of the court to make such provisions in its decree as it may deem just and proper concerning the care, custody, maintenance and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of the child demand it, and if the court find that neither of the parents is a fit and proper person to have the
care and custody of any such child, give the care and custody of any such child to any fit and proper person who is a resident of this state and willing to receive and properly care for such child, or to an institution incorporated for such purpose. The court likewise has power to change the care and custody of any child, either by giving it to, or taking it from, such parent or other person or such institution, on notice to the parents, and the court may revise its judgment concerning the care, custody, maintenance and education of the children or any of them and make a new judgment in that behalf, as the circumstances of the parents and the benefit of the children shall require. The court may likewise, under its broad general powers, award the care and custody of one or more children to one parent and of one or more children to the other parent.

Inasmuch as the severance of the marriage tie by divorce creates a condition somewhat analogous to that resulting from the death of the husband, the law requires the court, upon every divorce from the bonds of matrimony, for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, or limited divorce, to adjudge to the wife such allowance out of the estate of the husband for her support and maintenance and that of the minor children committed to her care and custody, as the court shall deem just and reasonable, or the court may finally divide and distribute the estate, both real and personal, of the husband, and so much of the estate of the wife as shall have been derived from the husband, between the parties, but no final division of the property shall impair the power of the court in respect to revision or change of allowances for the support of minor children.

When the estate is divided and the wife is given the care and custody of all or any of the children, it is usually made the duty of the wife to support the children awarded to her, but the law goes farther and provides that when a divorce shall be adjudged for a cause or fault committed by the wife and the care, custody and maintenance of their minor children or any of them shall be adjudged to the husband, the court may adjudge to the husband out of the separate estate of the wife such sums for the support and education of such minor children as it shall deem just and reasonable, considering the ability of the parties and all the other circumstances of the case.

Upon rendering a judgment nullifying a marriage or for a
divorce, it is the duty of the court to restore to the wife any of her property which may have been received or taken over by the husband, and no judgment nullifying a marriage or for a divorce of any kind shall in any way affect the right of the wife to the possession and control of her property, except as may be provided under the divorce laws of our state.

It goes without saying that in case of a judgment for divorce from the bonds of matrimony, that is to say, dissolving the marriage, the wife is not entitled to dower in any of the lands of the husband nor to any right of homestead in the family home, unless expressly awarded to the wife by the court.

Where alimony is adjudged for the support of the wife and children or either, in event of divorce, the law now requires such alimony to be paid in the office of the clerk of the Circuit Court and to be paid over by the clerk to the party entitled. In event of non-payment, it becomes the duty of the divorce counsel to take the proper steps to enforce payment. In addition to this, the parties may be compelled by the court to give security for the payment of any alimony adjudged to be paid.

From the foregoing, it ought to be manifest to all that women are endowed with a great many more rights than men. A married woman can transfer her real estate without the husband's joining in the conveyance. Not so the husband. Unless the wife signs off, dower is not barred and the deed of a homestead without the signature of the wife is absolutely void. The law has removed all restrictions against contracting, and we might say, against everything else which heretofore obtained for the supposed protection of women. But with the removal of these restrictions arose practically all the liabilities which may be incurred by men. You will bear in mind that under the old law a married woman was absolutely incapacitated from contracting or obligating herself at all, except for the use and benefit or with reference to her separate estate. If she signed or endorsed a note on behalf of her husband and it was not for the benefit of her separate estate, she was not liable. The law is different now. Our Supreme Court holds that she is liable upon such a note, and not only that, she is liable for all engagements she may enter into, whether they have to do with her separate estate or not.

About the only discrimination I have found in the law against married women is that provision of the state income tax law requiring the wife's income to be assessed against and paid by
the husband. The tax is graduated, and where the income of both is taxed together, it calls for a much higher rate than when taxed separately and requires the wife to disclose to her husband what her income is. It is not justifiable under any theory and it is surprising that the injustice of a law which exempts $800 income to a single person and only $1,200 to a married couple should be permitted to exist. The federal income tax law has no such injustice.

I have heard and read quite a great deal, coming from women agitators, to the effect that the female sex must be emancipated from the control and domination of men. If anyone preaches that doctrine to you, ask the spokesman in what respect women are under such domination and in what particulars their liberty may be broadened. From such survey as I have been able to make, I must admit that I am unable to find any particular in which women are inferior to men under the law. Widows get a third of the deceased husband's estate notwithstanding he may make a will to the contrary, whereas the wife may deed and will away every dollar of her property from the husband and he has no recourse. They not only have all the rights of men, but our laws where the "masculine gender is used include the feminine, unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare."

Whether this will promote the welfare of our people remains to be seen. In the order of nature certain duties and functions devolve upon the male and other duties and functions upon the female. Where civilization has advanced to the extent that the natural functions of either sex cease to be properly performed, the result is the decadence and final destruction of that particular civilization. If the new order tends to change natural relations and duties, it will be destructive. Such has been the result in Egypt, Babylon, Greece and Rome, and historians and publicists say that is what is happening to our race to-day.