

Some
Wrongs
of
Michigan
Women

1850--1908

From an Address before the Michigan Constitutional Convention, January 8, 1908, by Catharine Waugh McCulloch.

One of the greatest injustices of the Michigan constitution of 1850 was its failure to provide specifically that women might vote. The rule of interpretation of Michigan laws, as laid down in Sec. 3 of Chap. 7, that every word importing the masculine gender only, may extend and be applied to females as well as males, has not been applied to women attempting to vote or to hold office. Women may pay taxes, obey law, or be punished for crime under Michigan statutes using he, his and him; but something more specific is needed before Michigan women vote under such statutes. The Legislature itself in this State has little power to increase women's suffrage opportunities. The Supreme Court decided in Coffin vs. Election Commissioners, 97 Mich., 188, that a law granting women municipal suffrage was unconstitutional, and that only through the constitution could municipal suffrage be secured.

CONSTITUTION PROTECTS MEN

Men's suffrage rights were amply protected by the constitution of 1850.

Sec. 1, Art. VII., describing the various classes entitled to vote, uses the word *male* five times, so that not only male citi-

zens but male inhabitants and male inhabitants of Indian descent, etc., are declared electors. Sec. 161 and Sec. 251 of the Statutes provide different forms of oaths for these various kinds of males. Your constitution even allows the Legislature to provide a method by which absent soldiers may have their votes recorded. It even provides that voters absent in almshouse, asylum or penitentiary shall not be deemed to have lost their legal residences for voting purposes. That is, if any pauper, lunatic or criminal should be discharged or escape he could vote at the first election in his old polling place

The only persons specifically forbidden to vote are duellists, evidently very low, degraded persons, only fit to rank with the other disfranchised class—women. The ballot which safeguards your men, your civilized male inhabitants of Indian descent, your soldiers, your male paupers, lunatics and criminals,—this same ballot is needed by your women, is deserved by them, and from constitution makers only can it be secured.

WOMEN IN 1850

Why the men of 1850 did not understand this can perhaps be best explained thus: Then there were not in Michigan—no, nor anywhere—women such as today you have here; able, self-reliant, brilliant, public-spirited, well-educated. They could

not speak for themselves and by thousands demand the ballot. Michigan fifty-eight years ago had no woman editor, no woman college graduate. Lucy Stone, the first woman to be graduated from a college came from Oberlin in 1847, but she did not live here. You had then no women ministers, no women doctors or dentists or lawyers, such as your university now sends forth; no women notaries, or county school commissioners or school inspectors, or bankers or brokers; quite likely, no woman principal of a school, probably no high school graduates, few women teachers, no woman bookkeeper, stenographer, clerk; perhaps no woman in store, office or factory, no women in clubs. The men of fifty-eight years ago would be amazed if they could return to earth and discover the wonderful advance made by women. Even down to twenty or twenty-five years ago not much was known among lawmakers of the woman's movement, and there was not so powerful a movement in existence. No references to the Michigan Equal Suffrage Association, or the Women's Christian Temperance Union, or kindred women's organizations can be found in the earlier statutes. Much valuable space in the statutes relates to men's organizations, both those for profit and pleasure. Among the latter are laws relating to Masons, Odd Fellows, Knights of Pythias, Red Men, United Workmen, Foresters, Macca-

bees, Royal Arcanum, Knights of the Ancient Essenic Order, Hermann's Sons, Mystic Order of Kaaba, Knights of the Golden Eagle, Elks, Social Order of the Moose, Hibernians, St. George, St. Andrew and St. Patrick societies, Knights of Labor and Y. M. C. A. Only recently do your statutes protect such organizations as the Rathbone Sisters, Colonial Dames, W. C. T. U., Women's Study clubs, and Ladies of the Maccabees. This alone shows that the makers of the constitution and statutes of fifty-eight years ago and the lawmakers of even more recent years had plenty of thought for men and their demands, but no conception of such women as Michigan now has, and no idea of what they are now capable. Who could have believed fifty-eight years ago that Michigan women would gather and present to this convention petitions from 275,000 citizens asking women's full enfranchisement?

ENGLISH COMMON LAW

The ghost of the old English common law has perpetually haunted your lawmakers, and Supreme Court judges when they dealt with women. Like all ghosts it never brought any good. That English common law concerning women, though centuries old, still prevails in Michigan unless specifically repealed. This old ghost of a law has practically been repudiated

by England herself as unfit to govern English women. England today has so far forgotten it as to allow women wonderful liberties, even the right to vote for all officers, except members of Parliament, and to hold many offices, and yet this old foreign ghost controls free-born Michigan women. Michigan women have not submitted tamely. Hundreds of spirited women have protested in your courts and failed, and tens of thousands have groaned over these failures and their own powerlessness. The money spent in these lawsuits to defeat women's rights might have built a new State House.

For a generation now, women have been begging your legislators for remedies for some of the minor injustices and these men moved by common sense, humanity and their growing knowledge of the capabilities of women, have changed several provisions of the old common law relating to women. But, alas, they left many unchanged and the result is a curious conglomeration. Relics of the dark ages crop out along with modern provisions, an inconsistent mongrel medley. Women's full enfranchisement alone, will sweep into the waste-basket the mass of archaic legislation and musty court decisions.

Your own Judge Cooley, in *Tong vs. Marvin* 15 Mich. 65, very clearly sets out the chief points of the common law plan for the married woman. The husband had

control of her person and all her earnings. He could appropriate all her personal property to his own use, control her real estate during his life, and have sole control of the children. Judge Cooley held that the constitutional and statutory provisions giving a wife her own separate estate did not take away the husband's right to the custody of her person, and her earnings, nor give her power to dispose of her property without his co-operation. This is the sort of law which might well control some ignoramus, some weak-minded or evil-minded person, but not the aspiring women of Michigan, yet they have been obliged to submit these many years.

WIFE'S SERVICES

Even the kindness of an individual husband who promised to pay his wife \$250.00 per year for his housekeeping could not be upheld by the courts (Mich. Trust Co. vs. Chapin, 64 N. W. R. 334), "because it was against public policy" to pay a wife for doing what she must do any way. In Mason vs. Dunbar, 5 N. W. R. 432, the wife was only allowed to receive pay from her invalid father-in-law, for his care in her home, with her husband's consent. As the wife's services belonged to the husband, he only could sue for pecuniary damages when she was so injured by an assault as to be unable to work. He only

recovered for loss of his wife's services Hyatt vs. Adams, 16 Mich. 180; Berger vs. Jacobs, 21 Mich. 219. She could have recovered nothing for she did not own her own ability to work. A Wisconsin case held that damages to a woman's reputation by slander belonged to the husband and he only could release the slanderer. Probably Michigan courts would follow that ruling because a woman could not do her housework as well with her reputation all damaged. The court also held in Glover vs. Alcott, 11 Mich. 470, that the husband, not the wife, had a right to the earnings of a flouring mill owned by his wife, because no statute had specifically empowered her to run a mill, and if she ran a mill this "would deprive her husband of her earnings, and render her incompetent to perform the ordinary duties of the household."

Mill owning seems a vice peculiar to Michigan women for a statute, Sec. 5,064, provides for the husband of a mill owner, or owner of a part of a mill using her proxy for her, evidently to keep quiet the disgrace of having a mill owner for a wife.

CONTRACTS

The right of married women to enter into contracts is varying and peculiar. They may not be sureties, 39 Mich., 671. They may enter into partnership engagements with third persons but not with

their own husbands. Vail vs. Winterstein (1892), 53 N. W. R. 932, Edwards vs. Mc Enbill (1883) 51 Mich. 626. Can anyone guess why such an absurd distinction? They could make contracts about their separate property but courts looked askance at notes signed by a husband and his wife, Schlatterer vs. Nekodemus, 51 Mich. 160. DeVries vs. Conklin, 22 Mich. 258, Jeune vs. Marble, 37 Mich. 318. Yet in State Bank of Eldorado vs. Maxson, 82 N. W. R. 31, when a married woman endorsed her husband's note in Kansas, she was forced to pay it out of her separate property in Michigan. In the Jeune case the Judge gave as a reason why wives should not endorse husbands' notes, "the peculiar power of substantial coercion possessed by husbands over wives."

Though in the early days a husband could not directly give a farm to his wife, Ransom vs. Ransom, 30 Mich. 328, yet in Penniman vs. Perce, 9 Mich. 526, the court sustained a gift from wife to husband, saying, "Courts have never been so particular in cases of gifts of the separate property of married women in favor of their husbands as in other cases."

The court said in Tillman vs. Shackleton, 15 Mich. 456, "There never was any impediment to the acquisition of property through purchase by a married woman,

the difficulty was that the ownership passed immediately to the husband."

SEPARATE PROPERTY

The separate property of the wife which constitution and statute assures to her and which is heralded as remarkable favoritism to women, is so much under husbandly control that she cannot sell without his consent, nor even in case of separation remove it without an order of court. (Sec. 8683.) Johnson vs. Johnson, 85 N. W. R. 94. If her personal property has been worn out or consumed by her husband she can recover nothing. Cranson vs. Cranson, 4 Mich. 232. Morrill vs. Morrill, 101 N. W. R. 209. Wife is not entitled to share of the crop on land owned by husband and wife by entirety, though she may join him in action for trespass on their joint property. Fowler vs. Hayden, 89 N. W. R. 571

She must pay for buildings and improvements on her land ordered by her husband. She must pay the hired man working on her farm, Mosher vs. Kittle, 59 N. W. R. 497 (1894), and she must also pay out of her separate estate for anything eaten or used by her husband and family if they were ordered by her. Campbell vs. White, 22 Mich. 185. Who does generally buy or order the family supplies? A wife as well as a husband is liable under your statutes for the support of children and poor parents (Chap. 110, Sec. 1).

CLOTHES

Even if a wife's furniture could be worn out, all the canned and dried fruit eaten, all her loose change gone, still some think she has her board and clothes. Well, that is a mistake about the clothes. No Michigan wife owns any clothes purchased out of family funds or husband's earnings by her husband, unless he dies, and then only through the statutes of Michigan generously giving her her own clothes as well as his clothes. Michigan law seems to abhor a widow without clothes, but it should equally protect a wife. In *Smith vs. Abair*, 87 Mich. 62, 49 N. W. R. 509, the court held that the wife's clothes as well as the children's clothes purchased by the husband belonged to him. I believe a wife running away from her husband could be found guilty of larceny if she wore clothes away. Not to be able to run a mill is a privation most women must endure because of other reasons than the law of Michigan, but women do not take kindly to husbandly ownership of clothes.

WOMAN'S EQUALS

Being compared to children, as in the *Abair* case, is as embarrassing as being often classed with idiots and lunatics; and that is what Michigan does. In *Brown vs. Fifield*, 4 Mich., 325, the court, in explaining that a wife had no right to sell her horse without her husband's consent,

though she owned it, said: "Married women at common law, and infants, idiots and lunatics, might be owners, but could not convey." Women are again so classed in the statute, Sec. 10924, which forbids infants, married women and persons of unsound mind submitting matters to arbitration. The constitution puts duellists in their class by disfranchising duellists. It is inconsistent, it is absurd, to have such law in force in a State where you admit women to all your public schools, to your magnificent university, to the bar, elect them school officers (Sec. 2382), County School Commissioners, of whom you already have seven, and provide for women physicians in institutions caring for women (No. 185, Acts 1899). A married woman physician able to care for insane and imbecile women, but classed with them as incapable of agreeing to an arbitration! Is it possible that marriage reduces a woman to imbecility, or is it a symptom of mental unsoundness for any Michigan woman to marry with such unjust discriminations on the statute books?

DEATH, DIVORCE, AND PENITENTIARY

The laws relating to divorce and inheritance of interstate property seem equal. In divorce, the costs may even go against the wife (Sec. 8628) and perhaps alimony. When a wife is about to leave her husband

she can then make a contract releasing her dower and homestead for a consideration. *Randall vs. Randall*, 37 Mich. 563. *Meyerl vs. Meyerl*, 84 N. W. R. 1109. She is, after a divorce from bed and board entitled to immediate possession of all her real estate (Sec. 8633) and may even be decreed a return of a part or all her personal property (Sec. 8634). She also can sell and control her own real and personal property if her husband is in the penitentiary (Secs. 8659-8664), if authorized by the Probate Court, and this power continues until he gets out of the penitentiary and claims his marital rights in her property. Death, divorce and the penitentiary bring married women a justice they cannot claim with a living, faithful law-abiding husband.

COMPETENCY AS WITNESS

There is great inconsistency in the rules relating to a wife's competency to testify in court in matters where her husband is a party. The old rule made her incompetent, but your statutes partially remove this incompetency by allowing her to testify during certain divorce proceedings, or when he assaults her, or deserts her, and in certain other cases with her husband's consent. (Sec. 10213). But she was not allowed to testify because he would not give his consent in a case where he shot his child, *People vs. Gordon*, 100

Mich. 520, 59 N. W. R. 322, or when he committed an indecent assault upon their daughter in her presence. *People vs. Westbrook*, 94 Mich, 629, 54 N. W. R. 486, or in the case of bigamy, *People vs. Quantstrom*, 53 N. W. R. 165, or adultery, Sec. 10213. Her testimony was ruled out, and justice was defeated. The people of the whole State of Michigan in the last three cases were deprived of valuable witnesses in the wives of the wrong-doers, because the law of the State sealed their lips. If women could vote for their law-makers this would be changed. Let married women be made competent to testify in all cases and the fact of their marital relationship be shown only as affecting their credibility.

GUARDIANSHIP OF CHILDREN

If women had been represented in the Legislature of Michigan, would not both parents have been joint guardians of their children? As it is, the father is guardian during his lifetime (Sec. 8701), has the power to bind out as an apprentice (Sec. 8750) and his power stretches beyond his death for (Sec. 8706) the father may will the care and custody of a child born or unborn away from the mother to a stranger, and though this is contested by the mother if it is approved by the Judge of the Probate Court, the father's appointment of a guardian prevails. This is a most unjust

and cruel law, relic of the dark ages, fit to apply only to the most ignorant, depraved mother, not to the women of Michigan.

IMPARTIAL JURY

With statutes as they are, the administration of law cannot be expected to be favorable to women, or even just. Sec. 28 of Art. VI. of the constitution guarantees to every one accused of crime a right to a trial by an impartial jury. It is not possible that impartial juries should be the rule when women stand before them accused of crime or when wronged women have asked justice against men assailants. A beautiful, elegantly dressed adventuress, accused of crime, pulling the wool over the eyes of admiring male jurors, and a shabby, friendless, ruined girl, accusing her assailant, will neither of them secure exact justice from men juries today. Very few handsome women are ever sent to your penitentiary. Men jurors generally fix inadequate penalties for wrongs done women and girls. They can never be expected to go ahead of the law, and law shows little delicate discrimination between wrongs against women and animals. In Sec. 9315 falsely accusing a woman of unchastity only brings on the offender a \$100 fine or nine days in jail, while destroying a mourning dove brings also a \$100 fine and three months in the prison. In case of bastardy, the guilty

father may pay as low as \$100 and never more than \$500. This is not a criminal proceeding, either. So says your court in *Simon v. The People*, 42 Mich., 141.

You protect bees, elk, skunks, fish, game, peach and other trees, and cranberry marshes. You destroy wildcats, wolves and other noxious animals. Canada thistles must not go to seed. Male animals at large destroying property bring heavy fines on their owners. The wronging of a girl sometimes does not bring much worse punishment. A girl at sixteen is made by your law capable of consenting to her own ruin. No impartial man made such a law, and the maker of such a law could never make an impartial juror on such a case. Women's wishes are not respected in such laws.

SEX

The constitution, in Sec. 41, Art. IV., prohibits the diminishing or enlarging of civil or political rights, privileges or capacities of any person on account of religion, and the word sex should have been added. People may change their religion, but never their sex. Rights, privileges and capacities ought never to depend on color of eyes or hair, cast of features, sex or any other accident for which a person is not to blame and which a person can never overcome. Any other qualification ever demanded of a Michigan voter except

this of sex may be acquired by one's own exertion or the lapse of time. Property may be earned, minority outgrown, sanity regained, alienage removed, imprisonment outlived. But no industry, no age, no brilliancy, no morality can change sex. Will you not make sex less of a disgrace instead of more of a disgrace than poverty, minority, insanity and criminality?

TAXATION

Women's right to representation in government because of their payment of taxes is only recognized by Michigan in the matter of school elections. If this principle should be carried out concerning a schoolhouse, by allowing women taxpayers to vote for or against one, why should not woman taxpayers also vote for or against a town house, a city hall, a county courthouse, or a state capitol building?

POLITICAL DUTIES TODAY

Governmental duties now do not consist in being constantly in arms to protect the king, but they consist in helping shape the present conditions of living.

Fifty-eight years ago there were no great cities in Michigan. Now many of your people are crowded in cities where the city government does for them many things the husband and wife did for themselves fifty-eight years ago and still do for

themselves in rural communities. The farmer and his wife decide how to dispose of their garbage, where to get their water supply, whether the fruit, vegetables and milk they raise are fit for human food, where the pig-pen and outhouses shall be built, how sewage shall be disposed of, whether they shall slaughter a pig or sheep or cow in the front or back yard, the orchard or the meadow, how much of the yard their house may cover and of what materials it may be constructed, how many may sleep in a room, and how much air space must be allowed for each sleeper.

In your cities all such questions are decided by men-aldermen, elected by men-voters. These are questions affecting women's homes and the surroundings of their children, questions in which women are as vitally interested as men and on which they are as well informed.

The questions before your County officials, all are questions affecting women as well as men, the building of bridges, the housing of the poor, and criminal, the work of the courts. Women's tax moneys are used to pay for this.

In the realm of your State politics, women's money also pays for your great University with its men and women students, the great State charities, with their women blind, insane, deaf and dumb as well as the men and your penitentiaries

with few women in them, we rejoice to say. To share with you in the governmental functions of this great commonwealth and to help decide matters relating to women is what women's enfranchisement means.

IMPROVEMENTS

But your own laws already in spots show a growing recognition of women's ability. Your law allows a woman to insure her husband's life (Sec. 8690), to be the administrator of his estate (Sec. 9324) and to devise her own property without his control, hardly appropriate for one otherwise classed with imbeciles. It is unlawful to use obscene, immoral or insulting language before a woman (Sec. 11737) though it would be difficult to prove unless a man swore at his neighbor's wife who need not wait for his consent before testifying. The law also exempts a woman's sewing machine and spinning wheel from taxation and directs the employer in a store to furnish her a seat (Sec. 5375). The court also held in *Loré vs. City of Detroit*, 148 N. W. R. 661, that in a case where a woman was injured six cents was too small a sum for damages.

The law allowing women taxpayers to vote concerning school matters shows Michigan has begun to appreciate women's judgment in public affairs. The law allowing women municipal suffrage,

though declared unconstitutional, yet showed in this great commonwealth a new spirit of profound respect for women's abilities and achievements. When complete woman suffrage is established in the constitution the minor injustices, the the inconsistencies, the many absurdities now in Michigan law will be replaced with laws more fair and equal and righteous.

Was it not to this end that you passed these various remedial statutes, opened your common schools to women, your colleges and your university? Fifty-eight years of constitutional humiliation has been sufficient to make intelligent women appreciate being now placed by you on a legal and political equality with men.

If you do not now do this justice many a woman will feel it would have been better if you had left her in ignorance, never taught her the alphabet, or made her aware of her unfitness to be classed with imbeciles, children and duellists.

Are not Michigan women today as fit to be trusted with the complete right of suffrage as are the women of Finland, Australia, Norway, New Zealand, Tasmania, Wyoming, Utah, Idaho and Colorado?



