Some of us had visited the municipal courts in Chicago. As we went around to the different courts in the Federal Building we could not help but see the greater prestige and dignity in the latter as compared to the former. The federal judges presided with great dignity and pride over their courts, and were apparently men of legal attainments themselves. To our untrained eyes, they seemed to command a great deal more respect than the judges in the municipal courts, who are nominated by political organizations. We noticed also that in most cases the Federal District Attorney's assistants conducted their cases in a more efficient manner than the State's Attorney's assistants. This in turn seemed to put the lawyers more on their mettle, resulting in better preparation on their part.

Suggestion to Men Lawyers

When the final day came, and I was handed a voucher for nearly a hundred dollars, I felt a decided let-down. Life would seem very tame for awhile, but I knew that my real richness was not in the money I received, but in the broadening of my experience and point of view. I had only one regret. I wished lawyers would treat women jurors as human beings. They seemed to think that our point of view and our way of thinking was peculiar to our sex. In reality our ideas are determined by our experience, and on the whole do not differ very much from those of men. We are no better and no worse, and we prefer to be judged on our merits rather than our sex.

L. T. S.

WOMAN LAWYER DEFENDS PROPOSED "EQUAL RIGHTS" AMENDMENT

By HELEN ELIZABETH BROWN
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IT was a jolting surprise to find in the February JOURNAL an article, signed by the initials L. T. S., treating with levity and bias the subject of Women and the Law. This is an issue of gravest importance to the so-called democracy of the United States, especially in view of the astounding fact that citizens who are also women have been excluded from the protection and benefits of the Constitution by judicial decree in many states and very definitely by the Supreme Court of the United States. By a tortuous process which passes for judicial reasoning, the plain, common-sense language of the Constitution has been distorted until women have been forced out of that "charter of liberty" and it is now a document for men only.

Women Are Not Yet Full Citizens

Women of the United States have little cause to cheer for the Supreme Court on its 150th anniversary. It has erected a solid barrier between them and their Constitutional rights. Oh, yes, women are citizens, said the court, and the Constitution does say that the rights of citizens can not be abridged by state or nation and that no person can be deprived of life, liberty or property without due process of law or denied the equal protection of the laws, but a woman is a peculiar kind of citizen, a sort of sub-citizen, and all these things can be legally done to her (*Minor v. Happersett,* 21 Wall. 162). This was judicially decreed almost a century after a war was fought and a "free" nation established on the theory that taxation without representation is tyranny.

Just two years before, the Supreme Court was shocked that the Constitution should be invoked as entitling a woman to pursue the profession, occupation or employment of her choice. In a somewhat involved mixture of words, Mr. Justice Bradley said the Fourteenth Amendment could not be used to protect women against unequal laws which were "a barrier against the right of females to pursue any lawful employment for a livelihood." To do so, he said, would assume "that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation or employment in civil life." There was no inequality or discrimination in the Illinois statute the courts were construing but the courts injected discrimination into it and enforced it accordingly, at the same time protesting it was not their province to make laws.

The Myra Bradwell Case

The furore was caused when in 1872 Myra Bradwell of Illinois, who was fully qualified, applied to the Supreme Court of Illinois for a license to practice law in accordance with the procedure prescribed by law for any "person" who wished to practice law. Because she was a woman and married (although the record before the court did not show she was married), the license was denied. Her contracts would not be valid because she was married, the court said, and besides, even if the legislature did not exclude women, it must have intended to do so because we adopted the common law of England and "for a woman to have entered the courts of Westminster Hall as a barrister would have created hardly less astonishment than if she should ascend the bench of bishops or be elected to a seat in the House of Commons." God and nature were called upon to witness that "it belonged to men to make, apply and execute the laws." The Supreme Court upheld such nonsense (*Bradwell v. Illinois,* 16 Wall. 130). Many opinions were written to justify this judgment, these profuse effusions themselves betraying the feeling their writers were on uncertain ground. Quaint notions they were to be coming from men whose grandmothers played an important part in conquering a wilderness. Securely seated on judicial benches these women had helped establish, these judges evidently forgot, if they ever knew, that there had been no permanent colony in this country until women colonists came. One winter had sickened the men. Justice Bradley seized the opportunity to preach a pompous and bombastic sermon by way of a concurring opinion which now evokes not only amused smiles but loud guffaws. But, be it recorded with true American pride, that the distinguished, able and experienced Chief Jus-

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tice, Salmon Portland Chase, dissented from the judgment of the court and from all the opinions. Nevertheless, women were tossed out of the Constitution.

Following that, the Supreme Court deprived women of their Constitutional right to contract for their own labor which same right it had protected for men by reason of the fact that it was guaranteed to them by the Constitution. This decision added gratuitous insult to injury and injustice (*Muller v. Oregon,* 208 U. S. 412).

Susan B. Anthony

Under the leadership of a greater emancipator than Abraham Lincoln and at least as great a rebel as George Washington—Susan B. Anthony, women, after an unconscionable length of time, broke into the Constitution by means of the Nineteenth Amendment.

After the ratification of that Amendment in 1920, women got some consideration of their Constitutional rights from the Supreme Court—but not for long. In 1923, Mr. Justice Sutherland, speaking for that court, said it could not accept the doctrine that women of mature age, *sui juris,* require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances (*Adkins v. Children's Hospital,* 261 U. S. 525). The court had previously condemned such restrictions for men as violating "the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution" (*Lochner v. New York,* 198 U. S. 45). On the authority of these two cases, the Supreme Court struck down iniquitous labor restrictions for women only which handicapped them and left their competitors free in the struggle for a livelihood. The late Mr. Justice Butler pointed out that it was indeed significant that with the same factual background the New York legislature had passed two laws which were identical with the exception that one applied to all workers, both men and women, and the other subjected women workers only to its restrictions. Both acts were sent to Governor Lehman. Under pressure from men's labor unions, Governor Lehman vetoed the law which applied to all workers and signed the one discriminating against women. Women were spared its unjust consequences by the Constitution through permission of the Supreme Court.

"It is plain," said Mr. Justice Butler, "that under circumstances such as those portrayed in the factual background, prescribing of minimum wages for women alone would unreasonably restrain them in competition with men and tend arbitrarily to deprive them of employment and a fair chance to find work" (*Morehead v. New York,* 298 U. S. 587).

Result of Nineteenth Amendment

This was a five to four decision. Woman's hold on the Constitution was not very strong. Mr. Justice Owen J. Roberts was one of the five justices concurring in the judgment of the court. His vote alone gave women the protection guaranteed to all *persons* by the Constitution of the United States. Less than a year later, his vote took it away (*West Coast Hotel Co. v. Parrish,* 300 U. S. 379). Instead of a much vaunted government of laws, the rights of American women are subject to the whims of one man. By control of one judicial decision and in spite of the Constitution, Mr. Justice Roberts made himself labor dictator of women workers of the United States. The *Atkins case* was destroyed but the court was careful to say that the *Lochner case* was not disturbed.

In a powerful philippic dissenting from this unjust judgment, Mr. Justice Sutherland denounced the law under consideration as an invasion of women's constitutional rights. He spoke of the gravity of judicial duty and made some barbed statements about how it should be exercised. But women were again out of the Constitution because one man had exercised what is supposed to be a woman's privilege, that of changing his mind.

Effect of Laws of Some States

Many conscientious lawyers on numerous occasions have had the duty of warning clients who were women and married not to make their homes or invest their money in certain states because the laws of those states will deprive them of their property and subject them to a shabby, humiliating, even insulting legal status for the sole reason that they are guilty of matrimony. If they have children, their plight is worse. Mother is celebrated in lacrimose songs and vapid stories and is completely overwhelmed with sentimentality on a day especially set apart for that purpose, known as "Mother's Day," but mother is not paid the substantial tribute of justice in the laws that govern her. She has been denied the status of "person" and "citizen" under the Constitution. In the eyes of the law, she is a degraded creature.

A common-sense reading of the explicit language of the Constitution expressing its lofty principles of justice would lead anyone endowed with ordinary intelligence to believe that its protection of human rights included human beings. The Bill of Rights says nothing about men's rights or women's rights. It speaks of persons and citizens. The Constitution was established by "We, the People" to form a more perfect union, *establish justice,* insure domestic tranquility, provide

for the common defense, promote the general welfare and secure the blessings of liberty to *ourselves* and *our posterity*. No person, it decrees, shall be deprived of life, liberty or property without due process of law. No state, it proclaims, shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor deny to any person the equal protection of the laws. This is the supreme law of the land—or is supposed to be. Yet there are more than one thousand unconstitutional discriminations against women in the laws of this country.

A "Man's Constitution"

The courts have distorted its plain terms and prejudicially ruled that they protect men but not women. They have made it a man's Constitution. Now that the courts have made it necessary for women to specifically get into the Constitution in express terms of sex by means of an Amendment, what happens? Women who are carrying on the age-old struggle for human liberty are met with the same old fallacies which were advanced and discredited when women entered the Constitution by the Nineteenth Amendment. There is the familiar ignoring of substance and quibbling over form and procedure. Justice does not matter, trivialities are important. Under the Equal Rights Amendment which laws would be retained? Confusion would result. The favorite sophistry is the one about whether the husband will "support" the wife or the wife will "support" the husband, which completely ignores existing conditions and the important fact that even in a money-mad world money in itself will not "support" a family. Neither children nor adults can eat or wear the coin of the realm. Money must be converted into articles and services usable in the maintenance of life and that conversion is as important as the money itself. "Support" and money are not synony-

(*Continued on page 292*)

MYRA BRADWELL
Who Was Refused Admission to the Bar in 1872, Because a Woman

Association Achievements

(*Continued from page 321*)

laws of the Association providing for the House of Delegates, as well as the Rules of Procedure of the House of Delegates, are to be found in 62 ABA Rep. (1937) 1055-1104. The Report of that year and those following contain the proceedings of both houses.

To what extent the new organization has changed the work and the activities of the Association may be reasonably debated. It has not notably changed the character of the organization as it is reflected in the annual meetings. But that the Association acts with a new and greater responsibility is clearly enough indicated both in the range of the questions presented and in the markedly increased participation.

If, by means of an integrated bar or otherwise, the constituent bar associations should come to comprise all the lawyers in their various jurisdictions, the House of Delegates will be in a true sense a body that represents all the lawyers of the country. The Association will then speak, as was hoped long ago, with the accredited voice of the entire profession.

The detailed delimitation of function between the Assembly and the House of Delegates will doubtless be adjusted and readjusted as fuller experience dictates. So far as the body of the profession is concerned, it is particularly provided in Article V, section 10 of the Constitution that the House of Delegates by a majority vote may order a referendum either to the entire membership or to the constituent associations of the House of Delegates, and this referendum shall control the acts of the Association and its agents. How far this referendum will be used and to what extent it will give effective expression to the views of the profession, must be left to future development. It cannot be said, however, that in this latest phase of the Association, no account has been taken of the democratic foundation of our community.

The Future

In the United States of 1878, pioneer activity was still a major factor in economic life. In 1938, the last frontier had long disappeared, and the United States had become a highly and intricately organized industrial community. The change has been reflected in the legal profession. In 1878, the American lawyer was dominated by the English tradition for his substantive law and by a rather loose and haphazard American tradition in the organization of his professional life. In 1938, American law had grown into a maturity of its own, in substance, procedure and professional organization. The American Bar Association has in its growth and expansion faithfully reflected this development. But it has also done much more. It has given a steady direction to a progress that will increase the responsibility of the entire body of lawyers to the community and in the same measure increase the fitness of American lawyers to meet this responsibility.

[THE END]