----------oOOOoo----------

S T A T E M E N T of the C A S E .

Under date of October 29, 1901, ETTA H. MADDOX, a resident of Baltimore, Maryland, applied under the rules governing admission to the Bar of Maryland, for the privilege of taking the State Bar examination. The application was accompanied by the following note :

"Baltimore, October 28, 1901.

To the Honorable Judges of the
Court of Appeals of Maryland.

I beg to enclose herewith my application for admission to the State of Maryland in conformity with the rules adopted by your honorable Court. Whilst apprehending no difficulty in securing the requisite permission to take the State Bar examination at such time as may be designated by the Board of Examiners I deem it prudent, in view of the fact that some question has been raised, as to whether or not provision has been made in the law for the admission of women to the Bar of the State, to request that I may be allowed to submit through my counsel, an argument by Brief in support of my right as a woman to take the examination under the law, if the same be seriously questioned by your Honorable Court.

Respectfully submitted,"

The Court of Appeals under date of October 30, 1901, acknowledged receipt of said application and accompanying note, and granted the request contained in the latter (to file an argument by Brief) under the condition that the said Brief be presented to the Court by November 11, 1901.

----------oOOOoo----------

F A C T S .

Women landowners held courts of their own in the times of Edward I, Henry I, and even down to the 17th Century.

In the reign of Henry VII the Countess of Richmond was made Justice of the Peace.

Under the Feudal Law women were allowed to be Attorneys and Judges. Some restrictions were made as to married women.

Among the ancient Celts the Druidess as well as the Druid sat as Judge in case of murder.

Caesar tells us that the women of ancient Britain had power in Court and Council, and that no distinction was made in places of command or government.

Women sat in the ancient Saxon Witenagemot for the framing of laws.

Finland has women lawyers.

Holland's University courses are open to women. It has been considered that women would be allowed admission to the profession of advocacy; as yet no woman has applied.

Belgium has no formal prohibition against woman's admission to the Bar.

Sweden and Norway women lawyers have been allowed to plead before the Nisi Prius Tribunals. There has been no application for this privilege before the higher Courts but it would probably be granted as there is no inhibition.

English Colonies : Women have the privilege of practising law.

New South Wales has women barristers.

Cape Colony has several women lawyers.

The facts ~~herein~~ stated above were contained in an article written by Mrs. Catherine Waugh McCulloch of the Chicago Bar, and published in the Sunday Record Herald, Chicago, August 11, 1901.

= The English Common Law did not forbid women to act as Attorneys.

In re petition of Leach, 134 Indiana, 667, Hackney J. said : "We have searched in vain for any expression from the Common Law excluding women from the profession of the Law."

"Some of the early Statutes of England granted the privilege to men, but the letter of such Statutes did not exclude women."

IN THE NEW WORLD.

= Maryland was the first in the New World to admit a women as attorney. On January 3, 1648, Margaret Brent was by order of Court, admitted to the Bar as the Attorney of Lord Baltimore.

Congress of the United States in 1789 passed a law making it obligatory upon the Supreme Court of the United States to admit women to practise before said Court.

= Among the States which have admitted women to the Bar without the passage of special Statutes authorizing their admission to the Bar, are Iowa, Missouri, Michigan, North Carolina, Maine, Indiana, Kansas, Connecticut, Nebraska, Colorado, Washington, Pennsylvania, New Hampshire, (District of Columbia) Montana, Utah, and Ohio.

= In the following States, special Statutes have been found necessary : Illinois, California, Mississippi, Massachusetts, Oregon, Wisconsin, New York, and Minnesota.

Special Statutes have also been found necessary for woman's admission to the United States' Supreme Court, and the Court of Claims.

= New Hampshire : Statute declaring any citizen of the age of 21, of good moral character, with suitable qualifications. Women admitted under this Statute.

= Court held that as an Attorney's position was not a public office there was nothing to exclude women.----29 Atl. Rep. (New Hampshire) 559.---- Case of Kicker.

Connecticut Court held that under a Statute providing that the Superior Court might admit as Attorneys "such persons

as are therefore qualified agreeably to the rule established by Judges of said Court--women could be admitted.

-Case of Mary Hall, 50 Connecticut, 131.-

- Indiana : Court held, (in the face of a Constitutional Provision, that "every person" of a good moral character, "being a voter" should on prescribed conditions be admitted to the Bar)---that the phrase "being a voter" did not exclude women.---Such provision simply affirmed the right of a voter, without even an implied denial of it to women.

-134 Indiana, 666, 667. In re petition of Leach.

Colorado : Court held unless restrictive provisions be found in the Statute--women must be admitted.

16 Colorado, 441. In re Thomas, 27, Pac. Rep. 707.

Michigan : Statute declares--"No person shall be denied admission to practise law on account of sex."

New York : Race or "sex" shall constitute no cause for refusing any person examination or permission to practise law.

Illinois : By Statute-license required : no person to be refused a license on account of "sex".

Illinois : The Federal District Courts admitted women in 1874.

Iowa : Federal District Court also admits women.

Pennsylvania - Statute referring to admittance as "he, "his" + Women- admitted.

Dist. Rep. Vol-3-299-

Case of Margt. Richardson.

Women admitted to such "Court of Pennsylvania" + all the Courts of this under Statute referring to admittance as "he" - D. R. Vol 3-299.

A R G U M E N T .

= "As the law stood at the adoption of the Code in 1888, applications for admission to the Bar in this State, were to be made under Article X, Section 3, by male citizens of Maryland, above the age of 21 years. The Act of 1892, Chapter 37, made some change in the law, but retained the phrase "upon every such application from any male citizen of Maryland."

"All these provisions were repealed by the Act of 1898, Chap. 139. This Act entirely omits the term "male citizen". The term "petitioner" or "applicant" being principally used in the Act to designate the "person" applying for admission to the Bar. Such applicant, however, is referred to in the Act in several places as "him" or "himself".

- There are in this Act no restrictions as to race, citizenship or sex. Nothing tending to disqualify an applicant for admission to the Bar in consequence of her sex. Nothing which can be construed to debar a woman from admission to the Bar in this State unless it be the use of the "masculine pronoun".

= Article I of the Maryland Code, Sixth Rule of Interpretation provides, that the masculine includes all genders, except where such construction would be absurd or unreasonable.
This is a rule of construction which was settled at a very early day. 2 Inst. 45, and is recognized in the definition clause of all Statutes which contain such clauses; see for example Rev. Stat. of the U. S. Tit. 1, C. 1. and applies even to penal laws.

Phila. Rep. Vol. 17, 283. Case of Mrs Kilgore

If a woman may come under designation of "he" in a Statute defining a Felony and fixing its punishment, it is hard to conceive that she cannot under the same designation be brought within the terms of a Statute defining Civil Rights.

Phila. Rep. Vol. 17, 283. Case of Mrs Kilgore

= If a Statute require that the owner of a City lot should remove the snow from"his"sidewalk, will it not be held to extend to women?

= Act of Congress, February 25, 1871.----All Acts hereafter passed-----words importing masculine gender may be applied to females except the context shows that such words were intended to be used in a more limited sense.

Rules of Cons. 16 Stat. L. p. 431.

- The words of a Statute must be taken in their accepted or known sense.

Medley vs. Williams, 7 G. & J. , 46 d.

- If the meaning of the words of a Statute be uncertain, usage may be resorted to for their interpretation.

Frazier vs. Warfield, 13 Md., ~~436~~. 12-303-

- Words in a Statute are to be taken not in an exceptional and peculiar sense, but in that which is known and accepted generally.

13 Md. ~~450~~ 303- Frazier vs Warfield-

= When words are technical in character or have received "judicial construction", it will be presumed unless a contrary intent can be gathered from the whole Act that the Legislature used them in such technical or judicial sense.

- McKee vs. McKee, 17 Md., 359.

1 Alexander 2d Northwright 3 Md-471 V

The language of a Statute is its most natural expositor, and every construction is vicious which requires great change in its letter. = Is woman not included within both the letter and the spirit of the Act of 1898 ?

= In Colorado the woman law student graduates as "bachelor of law"; the Certificate to practise before the Supreme Court of Colorado, reads "him", "his", and "esquire".

= Certificates received by women attorneys in Denver, from the United States District and Circuit Courts for the District of Columbia solemnly recite : That the oath of office was duly administered to "him" in open Court.

- Quoted from Article published in "the Woman's Journal", Boston, August 17, 1901. Said Article written by Miss Mary F. Lathrop, "Attorney of Denver, Colorado.

= Under the Act of Congress of 1825 conferring upon the Post Master General the power of appointing postmasters, women have been appointed in all parts of the country as"postmasters" The same may be said of pension agents. These cases are the more noteworthy as being cases of public officers, to which the incumbent is appointed for a term of years, upon a compensation provided by law, and is required to give bond.

Chief Judge Park. In re Mary Hall--Supreme Court of Connecticut--21 Amer. Law Reg. 728.

= It is an undeniable proposition that contemporaneous exposition and uniform practise is a fundamental canon of construction.

Phila. Rep. Vol. 17, 194.

Again :

The Maryland Statute provides for the admission of attorneys from other States under certain restrictions which do not apply to the question of sex. "Under the provisions of the Act of 1898 members of the Bar of any State, District or Territory of the United States, who for five years after admission have been engaged as practitioners, judges or teachers of law, shall be admitted without examination on proof of good moral character after becoming actual residents of the State. It would appear, therefore, if a woman were admitted to the Bar in any of the States where women have been admitted to practise law, she could move to this State, and on proof of good moral character become a member of the Bar.

"The Act of 1898 also provides that members of the Bar of nay other State, District or Territory of the United States, who may be employed as Counsel in any case pending before any of the Courts of this State, may be admitted for all the purposes of the case in which they are so employed by the Court before which said case is pending, without examination.

It will appear, therefore, that a woman who had been admitted to the Bar in another State, could come here and be admitted in any particular case in which she might be counsel.

"If women could gain admission to the Bar here in this indirect way, would it not constitute a strong argument in favor of their right to be admitted directly, when there is nothing distinctly forbidden them ? =But it may be said, that, notwithstanding the words of the Act it was not the intention of the Legislature that females should be included. That women have never been admitted to practise as attorneys in Maryland, and therefore the Legislature intended they never should be.

Can there be a custom that a thing shall never be because it never has been ?

It may be said that women in this State were never accorded that which they claim as a right; therefore they are not entitled to it.

= It is not only the right of a woman citizen of Pennsylvania to practise law as an attorney under the State law; but, being a citizen of the United States,(--Burnham vs. Luning, 29 Leg. Intelligencer--Weekly Note Cases, Vol. 14, 255, Case of Mrs. C. B. Kilgore-)it is, also, a right guaranteed in the National Constitution, and recognized by Congressional legislation.

= The admission of attorneys is not a matter of right, it is rather one of privilege.

Phila. Rep. Vol. 17, 615. Case of Caroline B. Kilgore.

= The privilege of the admission to the office of ~~an~~ attorney cannot be said to be a right or immunity belonging to the citizen, but is governed and regulated by the Legislature, who may prescribe the qualifications required, and designate the "class of persons."

Case of Chas. Taylor, 48 Md., 33, quoting Bradwell vs. State, 16 Wall. /30 -

= All restrictions of human liberty, all claim for special privilege, are to be regarded as having the presumption of law against them, and as standing upon their defence, and can be sustained, if at all by valid legislation, only by the clear expression of clear implication of the law.---Indiana, 134. 67
In case of Leach.

= The Maryland Act of 1898 does not exclude women by either express words or necessary implication.

= This privilege may not, of course, be presumed in violation of laws, but must be held to exist so long as not forbidden by law.

Cummings vs. Missouri, 2 Wall, 321.

A cardinal rule in the construction of Statutes is that the intention of the Legislature shall be carried out, and that intention is to be collected from the words of the Statute by considering every part of it.

Gill vs. Carey, 49 Md., 247.
Miller vs. Cumberland Factory, 26 Md., 478.

= It is the golden rule of construction "to give to words used by the Legislature their plain and natural meaning, unless it is manifest from the general scope and intention of the Statute that injustice and absurdity would result from so construing them.

Madison vs. Hart, 14 Gill & Johns. 385.

When the sense of a Statute is manifest there can be no reason to refuse the sense which it naturally presents. To go elsewhere in search of conjectures in order to restrain it is to elude it.

17 Johns, 475; Jackson vs. Lewis,
People vs. N. Y. C. R. R. 13 N. Y. Rep.

It is safer, said the Judges, in 1 Term. Rep. 42, to adopt what the Legislature has actually said than to suppose what they menat to say.

The Statute of 1898 does not evince aught to show that it was enacted in the interests of men as distinguished from the the interests of women.

= It has been said : "The fittest course in all cases where the intention is brought into question, is to adhere to the words of the Statute, and to construe them according to their usage and natural import; usage so general, certain, uniform, and well established as to be presumed to be known and acted upon.

= If, by the Act of 1898, the Legislature of Maryland intended to exclude women from the practise of law, is it not reasonable to suppose it would have used the proper words ?

= We are not to forget that all Statutes are to be construed in favor of equal rights.

Phila. Rep. 281. Case of Catherine D. Kilgore.

Is it not a sufficient answer to the whole assumption (that the Legislature did not intend to include women) to say: "Quod voluit non dixit."

= All progress is recent.

These Statutes and decisions, except in the case of Margaret Brent, have all come in the last generation, during the last thirty years, when the public mind has become more accustomed to the idea of a woman being a thinking, accountable, responsible individual.

An ancient synod happily decided that women have souls.

Our modern Courts and Legislatures are being convinced that women have minds.

In an address before the American Bar Association August, 1901, the Honorable William P. Rogers, of Indiana, upon the subject "Is Law a Field for Woman's Work" said : "The story of woman's admission to the Bar in the United States is one of contest and struggle. We, their brethren, being already within the gates with legal power to keep those out who were of the opposite sex, have not extended a very hearty welcome to our sisters in law If the road has been open for them to enter, it has been only, because with their own hands, they have torn down the obstacles, and cleared the rubbish."

= The Revolution is over.

Its results exist to-day and all around us. and have existed long enough for a moral philosopher to write its history.

= The tendency of the age is to throw open, and not to close up the so called learned professions : But to offer to women new modes of livelihood, and new spheres of activity. Public sentiment has emancipated woman from the restraints which formerly circumscribed her life and fettered the freedom of her actions.

Positive legislation has everywhere broken down the barriers within which woman was formerly confined. There can be no question but that the tendency of modern legislation is strongly in favor of allowing women the privilege of admission to the Bar.

"A properly qualified woman has as much right to practise law as she has to practise medicine or surgery."

Phila. Rep., Vol. 17, 615. Case of Mrs Kilgore.

= Will Maryland take notice of these changes, and the rights which have grown out of them ?

The other learned professions of this State are open alike to the sexes.

If nature has endowed women with minds, if our colleges have given her education, if her energy and diligence have led her to a knowledge of the law, and if her ambition directs her to adopt the profession of law, shall it be said to her, at the dawn of the Twentieth Century, that she shall not be permitted to pursue the vocation to which her tastes lead her, and for which her studies have qualified her,--and that the profession of law is of all the professions and vocations in Maryland, the only one from which she shall be excluded,---that there is a sex limit to justice and equity.

= It has been said, that when Courts cannot solve such ques-

tions by reference to books or cases, they must decide by that common sense of justice which is natural to man, by that "right reason comfortable to nature" of which Cicero speaks.

= Will not the Court of Maryland--in the language of the Supreme Court of the United States, 4 Wall. 321, Cummings vs. the State of Missouri, declare; that ~~"All honors, all~~ positions are alike open to"every one", and that in the protection of these rights all are equal before the law.

"Before the law this right to a choice of vocations cannot be said to be denied or intended to be abridged, on account of sex."

Respectfully submitted
Howard Bryan
Attorney for Miss Ella Madden

This brief was prepared by Miss Madden herself and whatever merit in it is due to her efforts
Howard Bryan

Statement and Law in
Application of Miss
Etta H. Maddox

Respectfully submitted as
required by Judge
McSherry

Howard Boyd
Atty for Miss Maddox