

## THE MARRIAGE RELATION.

The Sacred Institution in its Legal Relations.—Laws and Customs of Various Nations in Various Ages.

[Chicago Times.]

The old law was that the husband and wife were one, and the husband was that one; but now, some writer has wittily observed, the husband and wife are two, and the wife is both of them. The question of the rights of married woman has been discussed in a historical and philosophical manner by a writer in the last number of *Appleton's Journal*, and some of his facts and arguments are worthy of thought.

The laws upon the relations of the husband and wife which prevail in the United States to-day were obtained from the English common law, but the history of those relations is interesting. Long before the Norman conquest the Anglo-Saxons had marital customs differing from the ones which now prevail among us.

The woman was regarded with great respect, and not as an inferior creature. The wife was allowed great personal liberty, and accompanied and assisted her husband in matters of daily life. The marriage tie was wholly ethical in its nature, and had lost entirely all traces of the contract of sale. The marriage gifts which bound the marriage consisted of personal estate, and were purely symbolical in character, and not given as means of support. The marriage did not merge the existence of the wife into that of the husband, but made her a partner with him. The wife appears, indeed, to have been given up wholly to the husband, and was not allowed a second marriage, and there is even found a rite similar to the Hindu suttee in the custom somewhat prevalent that she should, on the death of her husband, hang herself. But it was a legal unity where both were acting parties, and the union was one of mutual consent, and did not arise from a legal or forcible suppression of the wife. There is not to be found a trace, in the Saxon law, of the early Roman custom that the husband acquired a clear title to his wife and to all her property owned at the time of marriage or afterward acquired. As guardian, the husband was co-possessor with his wife of all her property, including the marriage gift; neither could alienate property without the other's consent, and generally the wife was the acting and the husband the consenting party. The husband had, in general, the free disposal of his property, as far as concerned his wife, but where a specific marriage gift had not been granted the wife she had a right in law to an undivided portion of her husband's property. The wife's property was not answerable for the debts of the husband, nor his property for her debts. Gifts and conveyances between the two were common. If the husband survived, the wife's property was inherited by her heirs. The wife had full ownership of her marriage gift, unless limited to her life by its terms, and it was conditioned on her survivorship. The husband had no rights as survivor, except as guardian of the children.

These were, according to the writer referred to, and his statements are supported by authority, the laws and customs of the Anglo-Saxons. But with the Norman conquest things were greatly changed. Feudalism was introduced into England, and force, not fairness, became the foundation of all law, the marriage law included. Only those who could fight were important in the state. Under those circumstances woman was forced down from her position of equality into one of utter insignificance, except as she might be the mother of a man-child. This idea has come even to our time, and a celebrated woman-rights reformer appeared before Congress, some years since, with the words: "Because we need these reforms it is that I, the mother of men, appear before you to demand them." The feudal system enforced chastity in the wife, and from the three ideas—the monogamous marriage, the insignificance of woman, and the necessary province given men under the feudal system—arose, our author thinks, the legal principle that the husband and wife are one, and the husband is that one; and finally the principle which had its origin in a barbarous oppression of the wife came to be boldly upheld as a protection to her honor. The oppression began first in property rights. The husband, as guardian, took all the rents and profits of his wife's real estate, but only in her right. Then it came to be proclaimed that the man and the woman were one, and the rule was established that the personal estate of the wife passed absolutely to the husband as a gift, at marriage. She never made a will, never made contracts, and never owned any personal estate.

After a while men began to realize the unfairness of a law based upon a romance but seldom realized in every-day life, and the law began to relax, though slowly and but a little. When the revolution of the American colonies occurred, the law upon marriage was that the husband took all his wife's personal property, absolutely, with full power to use and dispose of it, and he took all the rents and profits of her real estate, but could not make an absolute sale of it. If issue were born alive during the continuance of the marriage, he took a life estate in the wife's estate of inheritance. He was liable for all her debts contracted before her marriage, and was liable for all her contracts made during the continuance of the marriage, as his agent; among them contracts to procure

for herself the necessaries of life. He was also held liable on all actions for damages against his wife, whether the right accrued before, or during the continuance of, the marriage. She, on the other hand, became, on marriage, entitled to a life interest in one-third of all the estates of inheritance of which her husband was seized at any time during the marriage, to be enjoyed in case she survived him. She had a right to a reasonable share of the personal estate which he owned at the time of his death. She was not allowed to make a will, nor any contract binding herself or her property, except in regard to her separate estate, which she might bind in equity by a contract referring to it. She could not release her right to dower except by a contract made before marriage by way of settlement or jointure.

In the United States changes have occurred in several States since that time, and now, with few exceptions, there is no State which does not secure the property of the wife to her separate use, and protect it from her husband's use. In almost all States and Territories the wife is forbidden to bind herself by any personal contract, while she is allowed to bind her sole and separate estate in equity as if unmarried. The old common law liability of the husband for his wife's antenuptial debts is generally retained, as well as the right to curtesy in his wife's lands. The wife's dower and personality rights remain unchanged, but she can release them by a simple deed. The husband is still liable for his wife's wrongs, whether committed before or after marriage. The wife is allowed to enter into trade to a limited extent, and to make contracts binding on her as a trader.

The writer goes on to discuss what, in his judgment, the direction of progress should be. When education began to spread, he says, among the more advanced nations, the idea of female weakness of body had given birth to a similar idea in regard to her mind, and she was prevented from the opportunities of the very training which was necessary to demonstrate the falsity of the theory. Recent developments have been, he thinks, against this view, and he finds in those arguments the basis of the errors in the feudal idea of marriage:

1. To allow two supreme wills in the household would tend to promote family dissensions and legal complexities, which are to be discouraged; but to allow the wife a legal position would allow of two wills, and would therefore promote family dissensions.
2. To take away the wife's freedom of will is to take away her capacity, in the eyes of the law, for independent action; but she is deprived of this freedom of will to discourage family dissensions, and is therefore incapable of independent action.
3. To take away the wife's capacity for independent action is to destroy her legal existence, which, for the convenience of society, must be represented by her husband; but her capacity is taken away, hence legal unity.

Now, if the major premise of the first argument is denied, the whole structure falls, and this is what the writer does. He denies flatly that the existence of two independent wills in the family would produce discord. Freedom of will is required among the members of a firm, he says, in order that a harmonious decision may be reached and the business be conducted profitably. No society or partnership of two or more wills can be made harmonious, it is true, without certain mutual concessions and the recognition of certain mutual restrictions, but he thinks they should be mutual, and not confined to one will exclusively. He denies that there is any reason, in this argument, for placing the wife in a different legal position from that occupied by the husband, and the custom of marriage should involve these three things:

1. A married woman should have the capacity to hold, acquire, alien, devise, and bequeath her real and personal estate, and to contract, sue and be sued as if she were a single woman.
2. No persons married shall have any rights whatsoever in each other's property, either during or after coverture, except such as should be created under the provisions stated in the next paragraph, such as are claimed by inheritance, and such as might be created by special agreement or by devise or bequest.
3. On the death of either husband or wife intestate the survivor should be entitled to share equally with the heirs and representatives of the deceased in all the real and personal property owned by the deceased at death.

The objections to this, he says, will be that it is too radical, and tends to destroy that community of interest which is so essential to the harmony of the household, by making the wife pull one way and the husband the other; that the wife will be deprived of every means of support from the husband; that the ethical character will be lost to marriage; and that it will increase the opportunities for fraud, since each is not, as in other partnerships, held liable as agent for the other's acts. He defends his position against all these attacks, and argues in return that the measure would be desirable in that the rules of coverture would be greatly simplified, and that the moral and intellectual influences which the proposed change would bring to bear upon the social position of the woman would be such as would greatly advantage her and the society over which her influence is extended.

## The Late Maharajah of Jeypore.

By the death of the Maharajah of Jeypore, India has lost the most enlightened of her native sovereigns, and England has lost a firm friend. The position of the Maharajah among the princes of India was unique. All other Indian princes assume the air of warriors; the prince of Jeypore had the appearance and manners of a student.

His small, slight figure, his spectacled face, showed strangely among the warlike figures who assembled at Calcutta to do homage to the Prince of Wales on his arrival, but, much as the natives of India think of military pomp, no ruler was more beloved by his people

than was the prince, to whom warlike shows were abhorrent. During the royal tour through India, the other rajahs visited by the Prince of Wales—Scindia and Cashmere, and Holkar—exhibited with pride their armies, formed upon British models; the rajah of Jeypore was content to show a city with broad, regular streets, scrupulously clean and well kept, and a contented and prosperous people, and to amuse his guests with a few hundred fighting men of a type elsewhere extinct, armed with strange and uncouth weapons, a mere parody upon a military force. The rajah Jeypore was more proud of the schools he had founded, the institutions he had set on foot, the sanitary, the magnificent enamel work his people alone can produce, than of the pomp and display in which other Indian princes delight. And yet among the rajapoots of whom he was the chief, there is as good fighting blood, as high, if not higher, a sense of chivalry than among any other natives of the Indian race. But the prince appears to have had the happy faculty of convincing as well as ruling his subjects, and the fact that he should have been immensely popular among all classes, in spite of a devotion to the arts of peace, and a fondness for western innovations of a kind generally most obnoxious to natives of India, speaks volumes for his tact and wisdom as well as his enlightenment and intelligence. His death is a grievous loss to his subjects, and a matter for sincere regret among Englishmen in general.

## BARBED WIRE FENCE.

History of its Introduction, and Hints for its Use.

The first start toward a barbed wire fence was made about nine years ago. A farmer living a few miles west of Aurora, Kane county, Ill., finding that his cattle pushed their heads through the space between the strands of a common plain wire fence, studied on the problem of how to prevent them. He drove short pieces of stout wire into fencing split with a saw into pieces only an inch and a half wide and hung them to one or more of the wires that composed the fence. The plan worked well, and he had barbs manufactured in a factory that were sharpened at both ends. He put these barbed attachments on all the wire fence about his place and they attracted considerable attention.

Soon after he obtained a patent on his invention and commenced to sell farm, township, and county rights. In the course of a year miles of wire fence in the northern part of that State were equipped with these barbed attachments, the only objections to which were their cost and their liability to sag and warp unless they were secured to the fence-wire with several pieces of cord or small wire. His invention stimulated others wherever it was introduced. At least a dozen patents were issued for barbed fence wire or barbed metallic fencing of some sort in the course of the next year. In a short time several suits for infringement were brought by the proprietors of these patents, that had become very valuable. In the meantime a large number of machines were invented and patented for making barbs or securing them to wire. In 1874, it is stated that ten thousand pounds of barbed fence-wire were manufactured in this country. This year the total manufacture will probably reach fifty million pounds. Almost all railway companies have adopted it. It is finding its way into regions where rails, boards, and stones had been employed as materials for fencing since the first settlement commenced. The advantages possessed by barbed wire fences are many. The cost of the material is comparatively small, while it is easy to transport. Little labor is required to put it up, and repairs are ordinarily unnecessary. It occupies but little space, is not injured by the wind, while it does not block up the snow. It affords no shelter for weeds or for small animals. The grass that grows under it can be cut.

The great objections to its use are the wounds that are likely to be inflicted on animals that run or are pushed against it. When first put up about a pasture, cattle and horses, and more especially colts, are very liable to be injured by the barbs. After they have become accustomed to it they generally avoid it. There is always danger, however, of animals being injured that are pushed against it, while many wounds are made on animals that have defective sight. Various means have been devised for rendering the fence visible. A patent has been granted on a "protector" composed of a small piece of wood, plain or painted, with an attachment for securing it to the wire. A veterinary surgeon in Wisconsin contributes the following to *The Country Gentleman*, which certainly contains some valuable suggestions: "In traveling over a large portion of the country, I have made inquiry about the use of this fence. I have also examined, quite carefully, many different modes of construction. I found the majority of farmers opposed to this fence most decidedly, all the objections being in consequence of damage in some form which they had sustained. Nearly all seem to agree on the point that they would sooner put up with the inconveniences of the old style of fencing than suffer the damage from the wire fence. The railroad people are putting up in this neighborhood long sections of this fence, the result of which has already been so disastrous that many persons are already protesting against its further construction, or maintenance of the portions already up, although the

first portion was put up only a few weeks ago.

"I found some simple devices for preventing damage to stock by this fence. I noticed on one clean thrifty-looking farm, which was nearly all fenced by the barbed wire, that about six common laths were just tied at regular distances, by a small piece of wire to the barbed wire on each panel. This served to make the fence plainly visible. Another, and I think a much better plan, that I observed was tying common laths to the top wire. The best plan I saw was swinging a six-inch board from the top wire. This is substantial enough to be observed by any animal having ordinary sight. All these devices have more or less merit; all are good and cheap, and quite durable, and all are quite easily applied without the outlay of much time or money. I think I have a plan which will be more effective, and every way cheaper. I would collect the brush that lies rotting on many farms, and tie by a piece of common wire to the top wire of fence. This would hang down much lower, and be much more easily seen, and cost nothing but the time, which can be given when nothing else requires the special attention of the hands. If a farmer has no brush on his own land, he can generally get such worthless stuff from his neighbor for going after it. In an entirely timberless country, I would suggest coarse sough grass, which will answer every purpose except, perhaps, that it might be eaten by the animals restrained."

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