(Dictated.)

Mayville, N. Y.,
July 6, 1886.

Miss Ellen A. Martin,

Dear Madam:

I have yours of the 2d inst. and as my time will be very closely occupied during the coming week I will write my recollection of the matter to which you refer and which I may possibly supplement by reference to contemporary publications, if I should be able to consult them. The matter made some little stir at the time it being the only instance of the kind, I believe, in any Southern state and at that time one of the few instances in the country, perhaps. It was hideously reported at the time in some women's rights journal which seemed to have been edited without law or common sense and I believe an abstract of my ~~article~~ argument was published in several newspapers. I am certain that I have seen some of these in a scrap book since that time but whether I can lay my hands upon the book or not is a matter of considerable doubt. I cannot give the date either because I have not now access to a volumes of the Supreme Court Reports of that state. I do not think the matter was reported in extenso at all---there certainly was no written opinion delivered ~~at~~ by the court and I am quite sure that the names of those admitted to the bar ~~is~~ are not given in the reports. I can only recall ~~et~~ the date by association with other cases argued at that time.

I think it was in the year 1876 possibly 1877 that I was applied

to by Talitha A. Holton of Randolph County, North Carolina to appear before the Supreme court of the state and advocate her right to be admitted to the praetice of the law. She also desired me certify that she was of good character, of legal age and, in my opinion, a proper person to be admitted to the ranks of the profession. (I think her name was Talitha, not as you write it- Tabitha).

She was at that time, if I recollect, about twenty-three years of age, rather small, quiet, unassuming young lady. I had been acquainted with her family for ten or twelve years previous to that time. One of her brothers had studied law with me and been admitted to the bar, perhaps the year before. Another was at that time preparing or perhaps had been admitted the previous term of the Supreme court. The county in which they lived had been a part of my judicial district while I was upon the Superior court bench. Her family was of the middle class or what is known as 'common livers' in that region-- people in ~~almost~~ somewhat straightened circumstances but of more than ordinary intelligence. Her father, Cicero W. Holton I believe, was, I think, a minister of the Methodist Protestant church who worked his little farm on week days and ministered to the spiritual wants of his neighbors on the Sabbath. They were not prosperous nor distinguished in any way above their neighbors exeept for intelligence. The boys were bright but somewhat uncouth and not inclined, in the phrase of that region, "to press the collar". Talitha was the mainspring of the family. It was owing chiefly to her energy and perseverence that the brothers

were kept at the study of the law until they were ready for admission. Perhaps in order to encourage them, she read the books that they read. I know that she went over the course with the elder brother, who was at the time an inmate of my family, and I presume was the chief tutor of the younger. I do not know where her previous education had been obtained but in breadth of reading and accuracy of information it was decidedly unusual for her sex and ~~standing~~ station in that region. I had a very high regard for her on account of her devotion to her brothers and so far as she was personally concerned I had no hesitation as to the required ~~proof~~ certificate. The proposition, however, was a novel one to me. Upon general principles I was in favor of enlarging the sphere of woman's activity, in any case, to the utmost limit of her preparations and capacity. I had not examined the question of her admissibility, however, under the law of the state and declined either to give the certificate or appear in her behalf until I had made such examination. Upon so doing, I was satisfied that the construction of the law, made somewhat forcible by a previous ruling of the court, was in her favor and accordingly presented her application for admission, ~~to the court.~~ Quite a number of young men were applying at the same time and the court decided, practically without argument, to permit her to be examined, reserving the question of admissibility for consideration afterwards. It was at the opening of the term of Supreme court at which there was a large attendance of the bar of the state nearly all of whom were against the establishment of such precedent. She

application in that state. The code of 1854 had the usual provision that generic terms implying the masculine should include the feminine unless the contrary was clearly apparent.

My argument, as I recall it, rested upon four propositions:- First, that the general usage of the court, the question never having been raised, did not constitute a negative construction; that the court, being at liberty to consider the statute de novo, would be governed by the circumstances and conditions prevailing at the time the application was made, rather than those obtaining at the time of the passage of the act. In other words, that the question for the court to determine was not what was the intention prevailing in the minds of the legislators of 1854, but whether under the circumstances and surroundings, the conditions of life and civilization prevailing in 1875 the court was willing to say that it was unreasonable and absurd to suppose that the generic term ~~implied~~ used in the statute should not include women as well as men.

Under this head I discussed the social and politieal changes that had occurred during the preceeding twenty-two years since the enactment of the statute. Some of these were peculiarly cogent. For instance, the court had held by a continuous line of decisions, through many years previous to the close of the war, that by the common law--- or rather by a common law which they created---that insulting language from a colored man justified an assault on the part of a white man. This they were compelled by sheer force of events to revise without statutory provision and without overruling or disapproving

the previous decisions.

In like manner the court had been compelled to hold without specific enactment that the term "free white" meant also free black. There were a number of similar analogies which I do not now recollect.

Second.- Following the same course of reasoning, I urged that the court had made an affirmative ruling practically admitting this principle and clearly and positively extending this very provision of the law beyond the purpose and intention of the legislators at the time of its enactment.

The case referred to is not reported and I am uncertain as to whem the question first came before the court. Several years before this, however perhaps three or four, a ~~certain~~ colored man had applied for admission to the bar of the state. Whether the statute uses the term white citizen or not I am unable to say, but there was no possible doubt that at the time of its enactment the statute contemplated white men, ~~of this there could be no question~~ although, as in the case of my client, the question had never been raised, no colored man ever having presumed in the days of slavery to apply for admission to the bar. Upon the application being made somewhere about 1870-72, however, the court had decided that a colored man possessing other requisite qualifications was entitled to be admitted to the bar under this same statute without modification by any statutory or special provision whatever, but simply because the surroundings and circumstances of the the times had so changed that it was proper and reasona

ble to embrace them under the general term ~~employed~~ employed in the statute. The old clause provisional thereto, excluded by the same course of reasoning, to wit:- the colored population of the state as well as the white. And my contention was that a similar and not less remarkable change had taken place in the circumstances and surroundings of the female portion of the community; that employments which in 1854 would have been considered imporper for any women to engage in, were now honorable and respectable means of self-support; that so great had been the change in this respect that by consitutional enactment even, the married woman has been put upon a level with her husband in her right to possess and convey realty. I instanced also the cases of the wives and daughters of Confederate officers and soldiers who obtained a livelihood without losing caste among their associates, by teaching colored schools, which in 1854 would not only have been counted an act of infamy but would acutally have been a felony under the law of the state.

Third.-To meet the chivalric argument, which I knew would be offered in opposition to the effect, that woman was a being too exalted to be permitted to sully her sweetness by breathing the pestiferous air of the court room, I advanced and endeavored to maintain ~~my fourth proposition, to wit:-~~ the proposition that by increasing the avenues to self-support the temptation to a life of vice and immorality which very frequently comes from poverty, was greatly reduced.

Among those who spoke in opposition to the views I presented was ex-Judge Battles formerly of the court before which the question was pending. I do not remember the names of the others ~~who spoke in~~

~~opposition.~~ Indeed, I think the cool, quiet heroism of the young lady who had fairly "boosted" her brothers along into the profession and now simply asked to go where she had helped them to go, her poverty, her modesty and ~~the~~ thorough preparation, did more to disarm the opposition of the bar and overcome the scruples of the court than anything I said or could have said. After her admission she assisted one of her brothers in his practice. I never knew her to appear in court except on one occasion for a few moments merely to be sworn and formally admitted, in the Superior court. I have known nothing of her life since 187~~8~~ but ~~and~~ I do not doubt that ~~her brother's~~ the prosperity and recognized standing at the bar of her brothers is in no slight degree due to her influence, courage and invincible determination.

Upon the roll of female lawyers may perhaps be found those of higher attainment and greater achievement so far as the records of the courts and conduct of causes are concerned, but I am sure that there never was and never will be among them an instance of nobler motive, more heroic endeavor or more remarkable achievement than that of the poor country girl who, without a solitary friend of her own sex to appear by her side in the court, to listen to her appeal or even to pray for her success, dared to come alone before the Supreme Court of North Carolina and ask, relying upon her own capacity, thoroughness of preperation and certainty of right, to be permitted to earn her livlihood, aid in the support of her aged parents and stimulate the ambition and insure the success of her brothers, by being admitted to the practice of the law--- Talitha A. Holton the first and only female lawyer in the

As to that I have no knowledge.

state of North Carolina and, so far as I am aware, the only one admitted to the bar in any Southern state.

Very respectfully,

Albion W. Tourgée