

Wife Sale

John deP. Wright

IN THE SUMMER of 2003 a North Wales man advertised his wife for sale on the internet site, eBay. While the couple did this as a joke, revived interest in Thomas Hardy's classic *The Mayor of Casterbridge*, and recently published books such as *The Bride Sale* by Candice Hern and *Sixpence Bride* by Virginia Farmer, have brought this old folk custom back to popular notice.

The custom of "Wife Sale" has a long history, but it was most visible between 1750 and 1850. Wife sale appears to have flourished during this century not only because the rise of newspapers in the late eighteenth century provided a means of publicizing this custom but also because this was a time of turmoil in English society, caused to a large degree by the American Revolution, the French Revolution, the Napoleonic wars and their aftermath.

During these years divorce was unattainable in practice to all but those on the upper rungs of English society. About 1844, in a famous dictum, Sir William Maule enunciated for the edification of a poor bigamist the law of divorce

as it then stood in England.

... I will tell you what you ought to have done; ... You ought to have instructed your attorney to bring an action against the seducer of your wife for criminal conversation [an action for damages based upon adultery]. That would have cost you about a hundred pounds. When you had obtained judgment for (though not necessarily actually recovered) substantial damages against him, you should have instructed your proctor [a lawyer practising in the ecclesiastical courts] to sue in the Ecclesiastical Courts for a divorce *a mensa et thoro*. That would have cost you two hundred or three hundred pounds more. When you had obtained a divorce *a mensa et thoro*, you should have appeared by counsel before the House of Lords in order to obtain a private Act of Parliament for a divorce *a vinculo matrimonii* which would have rendered you free and legally competent to marry the person whom you have taken on yourself to marry with no such sanction. The Bill might possibly have been opposed in all its stages in both Houses of Parliament, and together you would have had to spend about a thousand or twelve hundred pounds. You will probably tell me that you have never had a thousand farthings of your own in the world; but, prisoner, that

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makes no difference. Sitting here as an English Judge, it is my duty to tell you that this is not a country in which there is one law for the rich and one for the poor. You will be imprisoned for one day. Since you have been in custody since the commencement of the Assizes you are free to leave.¹

Wife sale was the common person's answer to this state of the law. As a book from that era, *The Laws Respecting Women, As They Regard Their Natural Rights* (1777) p. 55, explained, wife sale was viewed to be a "method of dissolving marriage" among the common people, when "a husband and wife find themselves heartily tired of each other, and agree to part, if the man has a mind to authenticate the intended separation by making it a matter of public notoriety". ... "A purchaser is generally provided before hand on these occasions".

There appear to have been two forms of Sale: sale and delivery by auction in the open market, and conveyance by deed; the former was more common. The object of both was the same, however – to pass responsibility for one's wife on to another who would publicly acknowledge the charge.

SALE BY AUCTION

In a sale by auction the husband would lead the wife by a halter to market on market day where she would be put up for auction. The sale would proceed only with the wife's consent although, as Thomas Hardy's description of such an event shows, the wife might consider she had little choice. The wife also had a veto if the purchaser was not to her liking. The purchaser would lead her away by the same halter.

E.P. Thompson has done a great deal of research into the subject of wife sale. In his *Customs in Common: Studies in Traditional Popular Culture* (New York, The New Press, 1993) p. 433, he explains that:

Both the halter and the wife's consent were essential to confer legitimacy on the transaction. Even where the purchaser was not pre-arranged and where there was a genuine auction with open bidding the wife was able to exercise a veto. In a report from Manchester (1824) it was said that "after several biddings she was knocked down for five shillings; but not liking the purchaser, she was put up again for three shillings and a quart of ale".

Thomas Hardy's *The Mayor of Casterbridge* was written in the 1880's but is set in Dorchester in the 1840's. This is his description of a wife sale at a fair:

"Will anybody buy her?" said the man.

"I wish somebody would," said she firmly. "Her present owner is not at all to her liking."

"So we are agreed about that. Gentlemen, do you hear? It's an agreement to part ..."

"Now, who's auctioneer?"

"I be" promptly answered a short man, with a nose resembling a copper knob, a damp voice, and eyes like button-holes. "Who'll make an offer for this lady?"

"Five shillings," said someone, at which there was a laugh ...

"I'll tell you what – I won't sell her for less than five guineas to any man who will pay me the money and treat her well; and he shall have her for ever and never hear aught o' me. But she shan't go for less. Now then – five guineas – and she's yours. Susan, you agree?"

She bowed her head with absolute indifference.

¹ R.E. Megarry: *A MISCELLANY-AT-LAW* (London, 1955) p. 116. Megarry notes that few accounts of this passage agree. See Holdsworth: *HISTORY OF ENGLISH LAW*, vol. 1 (5th ed. 1931) p. 623, and other references in Megarry. See also Hay: *BOOK OF LEGAL ANECDOTES* (1989) p. 201. However, this judgment took on a life of its own and contributed to the eventual passage of the Matrimonial Causes Act 1857, which reformed the law of divorce in England.

"Five guineas," said the auctioneer, "or she'll be withdrawn. Do anybody give it? The last time, Yes or no?"

"Yes" said a loud voice from the doorway.

Hardy's description was based on accounts of actual sales in the *Dorset County Chronicle*:

25 May 1826: SALE OF WIFE: Man in Brighton led a tidy-looking woman up to one of the stalls in the market, with a halter round her neck, and offered her for sale. The woman has two children by her husband – one of whom he consents to keep. The other he throws in as makeweight to the bargain.

6 December 1827: At Buckland near Frome, a labouring man named Charles Pearce sold his wife to shoemaker Elton for £5 and delivered her in a halter in the public street. She seemed very willing. Bells rang.

Jeffrey Miller, in his book *Naked Promises* (Toronto, Random House, 1989) p. 43, discusses several other examples (as well as the negative reaction such sales sometimes engendered):

The legal propriety of wife selling was established folk wisdom: husbands frequently made such sales at market stalls, in the same way they sold cows and pigs, and even paid tax on them to government regulators. By the time Hardy wrote of the practice, it had become almost banal. A "shipping news" item in the edition of the *Times* for March 30, 1796 reads,

On Saturday evening last, John Lees, steel-burner, sold his wife for the small sum of sixpence to Samuel Hall, fellmonger [a seller of hides], both of Sheffield. Lees gave Hall one guinea immediately to have her taken off to Manchester the day following by the coach. She was delivered up with an halter round her neck, and the clerk of the market received fourpence for toll. It would be well if some law was enforced to put a stop to such degrading traffic!!

A year later, the traffic was evidently unimpeded:

On Friday a butcher exposed his wife to sale in Smithfield market, near the Ram Inn, with a halter about her neck and one about her waist, which tied her to a railing, when a hog-driver was the happy purchaser, who gave the husband three guineas and a crown for his departed rib. Pity it is there is no stop to such depraved conduct in the lower order of people.

SALE BY DEED OF CONVEYANCE

Although less common than the auction, sale by deed of conveyance also occurred. This was usually transacted in a Public House (a Bar), since notoriety of the transaction was still thought to be essential. This form of sale became more usual after the 1850's as public disapproval of the practice became widespread.

As already mentioned, such sales often had a prearranged purchaser. In fact, the wife might agree to a sale and make her own arrangements for her "purchase". For example, the wife might arrange to have herself purchased by her own agent, or by her kin – thus providing a means by which a wife could be "bought out of" her existing marriage, just as soldiers were bought out of the army.

William Andrews in his book *Curiosities of the Church* (1890) p. 177-78, notes a famous case where a returned soldier sold his wife to the father of her three children. The latter was able to marry her legally only 25 years later, when the first husband had died. Thompson even cites three cases where a wife was sold off by Poor Law officials.²

While the practice of wife sale was mainly observed by the lower classes, there are also recorded cases of conveyance by deed among the higher classes. The latter must have known

2 E.P. Thompson: *CUSTOMS IN COMMON: STUDIES IN TRADITIONAL POPULAR CULTURE* (New York, The New Press, 1993) p. 436-37.

that the practice was ineffective in transferring legal rights and obligations, but they would also have known that a deed from the husband was conclusive evidence of his condonation of the wife's adultery, which would bar the husband from initiating any law suit against her paramour for *criminal conversation*, an action for damages based upon adultery.³



At the time that the British army was demobilized after Waterloo, wife sale was very common:

In the manufacturing districts in 1815 and 1816 hardly a market day passed without such sales month after month. The authorities shut their eyes at the time, and the people were confirmed in the perfect legality of the proceedings.⁴

However the forces of reaction were gaining strength. As post-war English society struggled to resume normal living the fact that the practice of wife sale had never had any legal basis,⁵ and was considered immoral by the "betters" in society, began to show in the prosecution of those who engaged in it. In 1815 a man was sentenced at Manchester to three months imprisonment and to the pillory for selling his wife.⁶ Thompson discusses another case, from shortly thereafter:

In 1823, in Birmingham, John Homer, an ex-soldier, was tried for bigamy. He was alleged to have treated his wife brutally and to have finally sold her against her will in a halter in

the market. The purchaser was her brother. He paid three schillings to "buy her out" of a marriage. Homer, supposing he was free to marry again went through a formal church ceremony. He was convicted of bigamy and sentenced to seven years transportation.⁷

Notwithstanding the changing attitudes in society, the practice proved to be remarkably tenacious. The *Stamford Mercury*, 12 March 1847, reported that at Barton-Upon-Humber (Lincolnshire):

On Wednesday ... it was announced by the cryer that the wife of George Wray, of Barrow ... would be offered for sale by auction in the Barton market place at 11:00; ... punctually to the time the salesman made his appearance with the lady, the latter having a new halter tied around her waist. Amidst the shouts of the lookers on, the lot was put up, and ... knocked down to William Harwood, waterman, for the sum of one shilling, three half pence to be returned "for luck". Harwood walked off arm and arm with his smiling bargain, with as much coolness as if he had purchased a new coat or hat.

Several years later, on 25 May, 1849, the same newspaper reported that Harwood was in the local County Court refusing to acknowledge a debt contracted by his "wife" before purchase. He argued that at the time he bought the woman he did not take her debts along with her.

The judge said (with astonishment): "What do you mean by buying the woman?" The lady alluded to here stepped forward, and said she was purchased in the usual way. ... His Honour seemed to be dumbfounded.⁸

3 Kenny: *Wife Selling In England* (1929) Oct. L.Q.R. 494.

4 Thompson p. 443.

5 According to Lord Mansfield, C.J., [3 Burrows 1438] there had been a cause in the Court of Chancery wherein it appeared that a man had formally assigned his wife over to another man; and Lord Hardwicke (1690-1764) had directed a prosecution for that transaction, as being notoriously and grossly against public decency and good manners. Jeffrey Miller, *Lawyers Weekly*, 13 Feb. 1998.

6 Thompson p. 452.

7 Thompson p. 432.

8 Thompson p. 455.

The practice continued for at least several more decades. For example, in 1882:

The press reported ... a woman sold by her husband for a glass of ale in a pub at Alfreton on a Saturday night "before a room full of men he offered to sell her for a glass of ale, and the offer being accepted by the young man, she readily agreed, took off her wedding ring, and from that time considered herself the property of the purchaser."⁹

As late as 1889, near Sheffield, "a leading member of the Salvation Army" sold his wife to a friend for a shilling and led her by halter to his house.



Like many other folk customs, the practice of wife sale seems to have been exported to North America. A document originally published in June 1861 in Colorado, having been witnessed by the Clerk of the District Court there, states:

Know all men (and women) by these presents that I, [Judge] John Howard of Canon City of the first part, do hereby give, grant, bargain, convey, and quit claim all my right, title, and interest in and to the following (un)real estate, to wit: The undivided ancient estate known as Mary Howard, the title of which I acquired by discovery, occupation, possession, and use, situate at present in the town of Denver, Jefferson Territory, together with all the improvements, made and erected by me thereon, with all rents, profits, easements,

enjoyments, long suffering, and appurtenances thereto in any wise appertaining, unto -, of the second part; to have and to hold unto the -, so long as he can keep her without recourse upon the grantee [sic] as endorser.¹⁰


On the northern side of the border the Port Arthur, Ontario (now Thunder Bay) *Weekly Sentinel* & *North Shore Miner* for 21 November 1890 ran the following article:¹¹

A FAMILY SOLD

HALIFAX MAN SELLS HIS WIFE AND CHILDREN FOR \$40

HALIFAX, Nov. 15 (Special) – Some months ago a man named Wm. Gifford, of this city, entered into an agreement with one George Thompson, for the sale of Gifford's wife and family for the sum of \$40, the condition of the sale being that Thompson should take the children until they reached the age of 16. The transfer of the wife and family was made and since then Thompson has been living with Mrs. Gifford and children. Everything went along serenely for a time, but it is reported that Thompson was cruel to Mrs. Gifford and children and the Society for the Prevention of Cruelty to Children has decided to obtain warrants for the apprehension of the children, when they will be placed in an institution.



Wife sale is a good example of how social customs may arise to accommodate perceived needs in society and then wither away when society changes. 

⁹ Thompson p. 456.

¹⁰ Jeffrey Miller, *NAKED PROMISES* (Toronto, Random House, 1989) p. 43.

¹¹ Brought to my attention by Janis Higgins, Thunder Bay Branch, Ontario Genealogical Association.