THE NATIONALITY OF MARRIED WOMEN.

By the common law of England, the nationality of a woman was not affected by her marriage. It was not until 1844, that an Act was passed by which an alien woman marrying a British subject became a British subject; and not until 1870, that an Act was passed, by which a British woman marrying an alien lost her British nationality and became an alien.

In the United States, it was only in 1857 that an Act was passed by which an alien woman marrying a citizen of the United States thereby became a citizen; and in 1907 that an Act was passed by which an American woman marrying an alien lost her citizenship of the United States and became an alien.

Strangely enough, these enactments, by which the nationality of a married woman became merged in that of her husband, were contrary to the general trend of legislation in all English-speaking countries, which tended more and more to recognize the independent legal personality of married women.

It may be noted that this trend was, and is, only one aspect of a wider movement, which has for its root idea the principle that women, like men, are human beings, and as such, are entitled to the same civil and political rights and privileges as men enjoy. Women, in all parts of the world, have grasped this principle, and, as a result, have claimed and are claiming, not only independence, but also the same status and rights as those possessed by men. In the course of their efforts to establish these claims, women have formed organizations, both national and international, which have demanded, among other things the abolition of such discriminations, as to the acquisition and loss of nationality, as are based solely on sex.

It was largely as a result of the activity of women's organizations in the United States that Congress passed the Cable Act in 1922. That Act was based upon the principle of independent citizenship for married women. It declared that neither sex nor marriage was, in future, to abridge the right of any foreigner, otherwise eligible, to become a naturalized citizen of the United States. Marriage alone was not to affect the citizenship of an alien woman marrying a citizen of the United States or of a woman citizen marrying an alien. At the same time, the principle of family unity was observed, in so far as the naturalization of the alien wife of a citizen, as well as the repatriation of the American-born woman, who had lost her citizenship by marriage to an alien, was facilitated.

However, discriminations based on sex and marriage were not entirely abolished. In the first place, a discrimination in favour of women was created in as much as upon marriage they might have an opportunity of choosing one of two nationalities, which was a privilege not granted to men. In the second place, discriminations against women were created in as much as: (1) an American woman marrying an alien ineligible to citizenship of the United States, was to lose her citizenship, and (2) an American woman married to an alien, even if she had not already renounced her citizenship, was to be presumed to have renounced it, and thereby to have lost her citizenship, if she lived for two years in the foreign country of which her husband was a citizen, or for five years in any other foreign jurisdiction. Acts of Congress, passed in 1930 and 1931, have removed these discriminations against women; but, it is believed, the discrimination against men still exists.[1]

It would seem, therefore, that in the United States, the women's organizations have been successful in their claim for independent nationality. In a few other countries, also, the efforts of women's organizations have been rewarded by legislation recognizing the principle of equal nationality rights for married women. But women have not confined themselves to national agitation. They have also formed various international organizations, with a view to establishing their 'equal rights.'

Some of the better known of these international organizations are: The Equal Rights International, The International Council of Women, The All-Asian Conference of Women, The International Federation of University Women and The International Alliance for Suffrage and Equal Citizenship.

The International Alliance, last mentioned, has been particularly active. In 1923, it held a meeting at Rome, at which the recommendation was adopted "that a conference of representatives of the governments of all states be held with a view to the adoption of an International Convention" dealing with the nationality of married women. The Alliance also adopted a provisional draft of such a Convention, which was published and submitted for criticism and comments to the various groups in different counties. The general principles of that draft are worth noting. They are as follows:

(a) Effect of marriage. The nationality of a woman shall not be changed by reason only of
I. Marriage, or
II. A change during marriage in the nationality of her husband.

[1] See the *American Journal of International Law* for October, 1931.

(b) Absence of consent. The nationality of a married woman shall not be changed without her consent except under conditions which would cause a change in the nationality of a man without his consent.

It was in the year following the meeting of the International Alliance at Rome, that, on the proposal of Sweden, the League of Nations Assembly requested the Council of the League to appoint a committee of experts "to prepare a list of international questions, the international regulation of which by international agreement seemed most desirable and realizable at the present time and to report on questions ripe for solution with the possibility of preparing for conferences thereon." Accordingly, a committee of experts was appointed, and at its first meeting, subjects were selected for consideration, among which was nationality. A sub-committee was then appointed to report on this subject. In due course, the sub-committee presented a report including a Draft International Convention, which the Committee of Experts later adopted in an amended form.

After considering the criticisms of governments to whom the report was submitted, the Committee of Experts recommended nationality so far as dealt with in its Draft Convention as a subject ripe for consideration in an international conference, and the League Assembly on September 28, 1927, decided to call a conference to deal with three questions, of which nationality was one. After further preparatory work had been done, it was eventually decided that the Conference should meet at The Hague in March, 1930.

Meanwhile, women's organizations had continued their agitation for independent nationality for married women. The International Alliance met again in 1929, this time in Berlin, and took action on this question. It summarized the legislation in various countries on this subject, and requested that at the Conference to be held at the Hague: "(a) the meetings should be public, (b) there should be representation of women, and (c) the principles laid down by the Alliance should be given due consideration." The International Federation of University Women also considered the matter at Geneva in September, 1929.

In the same year, a research group was organized at Harvard University for the express purpose of presenting a Draft Code on Nationality to the Hague Conference. That group made a detailed investigation, which included an examination of the laws relating to the nationality of married women in force in various countries at that time. It was observed that, as the law then stood, in more than forty countries, an alien woman

acquired by marriage the nationality of her husband. It seemed that only five countries did not give their nationality to alien women who married their nationals. These countries were Argentina, Guatemala, the U.S.S.R., Uruguay and the United States.

An excellent example of the type of law prevailing in these five countries is found in the Cable Act, which has been considered above. An equally good example of the other type of law is to be found in the British Nationality and Status of Aliens Acts, 1914 to 1922. So far as married women are concerned, the policy of this British legislation is simply that the wife of a British subject shall be a British subject, and the wife of an alien shall be an alien. In other words, a wife's nationality from the British point of view is generally dependent on the nationality of her husband. However, this general rule is subject to a few exceptions, which may be noted in passing. Thus, the grant of a certificate of naturalization to an alien, who thereby becomes a British subject, does not necessarily include his wife. Moreover, it is possible for a married woman who is a British subject to retain her British nationality although her husband ceases during the continuance of the marriage to be a British subject; and where a woman who was a British subject at birth marries an alien and war subsequently breaks out between this country and the State of which she has become a subject, she may, if the Secretary of State thinks it desirable, be granted a certificate of naturalization. Again, although a woman, who has lost her British nationality through marriage, does not ipso facto regain her British nationality on the death of her husband or the dissolution of her marriage, she may in such event be renaturalized at once, without being obliged to observe the normal period of residence in His Majesty's dominions generally required for naturalization.[2]

Legislation, similar in principle to the British Nationality Acts, was, in 1929, and still is, in force in many countries, such, for example, as Belgium, Denmark, Norway, Sweden and Turkey. Thus we find in the Belgian law of May 15, 1922:

> Article 4.—The foreign woman, who marries a Belgian or whose husband becomes a Belgian by option, follows the nationality of her husband.
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> Article 18.—The following persons lose Belgian nationality. . . . 2. The woman who marries a foreigner of specified nationality if, by virtue of the law in force in her husband's country, she acquires his nationality.

[2] This summary represents the position at the beginning of 1933. For recent amendments see below, at page 291.

It may be observed that Article 18, (2), of the Belgian law is worded that a Belgian woman only loses her Belgian nationality, if, on marriage to a foreigner, she acquires his nationality. In this way the disasters of statelessness are avoided.

It was observed by the Harvard Research Group that in Denmark, Norway, Sweden, Turkey and France domicile or residence was an important element in determining the nationality of married women, and that in all these countries the principle that the nationality of a married woman follows that of her husband was retained in whole or in part, although under the French law freedom of choice to a considerable extent was given to the wife. To be more specific, the French law of August 10, 1927, provides that a foreign woman who marries a Frenchman only becomes a French woman on her express application or when, in accordance with the provisions of the law of her nation, she necessarily is put in the condition of her husband. "A French woman who marries an alien retains her French nationality, unless she expressly declares a wish to acquire, in accordance with the provisions of the law of the nation of the husband, the said husband's nationality." However, "She loses her French nationality if the spouses fix their first domicile out of France after the marriage is solemnized and if the wife necessarily acquires the husband's nationality, under the law of the latter's nation."[3]

In short, the laws of various countries on the subject of the nationality of married women vary widely, both in principle and in detail. The inevitable result is that conflicts arise, and it frequently happens that when a subject of one country marries a subject of another country, the wife either has a dual nationality or is stateless. We do not have to search far to find examples. Thus, a British woman marrying a citizen of the United States (prior to 1934) loses her British nationality without acquiring citizenship of the United States. On the other hand a woman citizen of the United States marrying a British subject, does not lose her citizenship, but she does acquire British nationality.

Thus it is that the diversity of nationality laws leads to cases of statelessness and double nationality, which may inflict severe and painful consequences upon the parties and may, especially in time of war, be a great source of international friction.

[3] See *American Journal of International Law*, Special Supplement on the Codification of International Law, Vol. 23, 1929, pages 69-76.

When the representatives of some forty-eight states met at The Hague in March, 1930, they had to face these problems. A solution was difficult to find, and, as a result, the discussions and Committee meetings lasted nearly a month. Eventually, however, a number of instruments, resolution and recommendations were drawn up and adopted. Resolutions A. VI, and A. VII dealt with the thorny subject of the Nationality of Married Women. The Resolutions read as follows:

VI. The Conference recommends to States the study of the questions whether it would not be possible,—

1. to introduce into their law the principle of the equality of sexes in matters of nationality, taking particularly into consideration the interests of children.
2. and especially to decide that in principle the nationality of the wife shall henceforth not be affected by the mere fact of marriage or by any change in the nationality of her husband.

VII. The Conference recommends that a woman who, in consequence of her marriage, has lost her previous nationality without acquiring that of her husband, should be able to obtain a passport from the State of which her husband is a national.

The Conference also adopted a Convention dealing with the whole subject of Nationality. The Convention embodies the general principles,—that each State has the right to determine who are its nationals, that where a person has dual nationality each State, of which he is a national, may treat him as its own national, that where a person is a national of State A and of State B, State A cannot afford diplomatic protection to that person when he is in State B, and vice versa, and that when in third States, such a person shall be treated as a national of the State, as between A and B, with which he is most closely connected.

The subject of the nationality of married women was dealt with in Chapter III of the Convention. The Conference found it impossible to proceed upon the principle of independent citizenship for married women, for, though most of the delegates approved of the principle in theory at least, their governments were not prepared to alter their laws so as to bring the principle into practise. The result is that the Articles of the Convention which deal with this subject are purely pragmatic, and aim, not at the ideal of equality demanded by the women's organizations, but merely at the solution of the problems raised by the conflict of laws.

The Articles are as follows:

Article 8.—If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

Article 9.—If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

Article 10.—Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

Article 11.—The wife who under the law of her country lost her nationality on marriage shall not recover it after the dissolution of the marriage except on her own application and in accordance with the law of that country. If she does recover it, she shall lose the nationality which she acquired by reason of the marriage.

The Convention containing these Articles is to come into force on the receipt of ten ratifications by the Secretary-General of the League of Nations. The Convention has been signed by the representatives of thirty-six countries, including the United Kingdom and the Dominions. It has not been signed on behalf of the United States or of the U.S.S.R. To date (December, 1933) so far as the present writer is aware, the Convention has been ratified in whole, or in part, by only four countries,—namely, Brazil, Monaco, Norway and Sweden.

The Hague Nationality Convention has aroused a great deal of comment, criticism and controversy. Professor Brierly's comment is that, "Perhaps, too, it is not without a moral for international law reformers that the women's organizations, though without any official status at the Conference, should have succeeded in inducing the Conference to go as far as it did in accepting their demands. They at least, unlike most of the official delegates, knew exactly what changes they wanted to have introduced into the law."[4]

However, the feminists were far from satisfied. As a matter of fact, as early as 1931, a Committee, representing eight International Women's Organizations, having a total membership of about forty-five millions, which Committee was set up in response to an invitation from the Assembly of the League of Nations, declared their hearty disapproval of Articles 8-11 of the Hague Convention. The representatives of four of these organizations went so far as to demand the immediate revision of these Articles, because they pointed out, that they were not based on the principle of equality, and that the ratification of the Convention unamended would serve only to crystallize the subordination of married women in matters of nationality. The statement of these representatives contains some interesting material

They said in part:

"We wish, first, to reaffirm the principles set forth in our report to the Assembly last year, wherein we expressed our opposition to the Hague

[4] See *British Year Book of International Law* for 1931, at page 5.

Nationality Convention because it differentiates between men and women, and wherein we urged the Assembly to submit to the Governments a new Convention founded upon the principle of equality in nationality. We wish also in this connection to emphasize again the especial significance of the Hague Nationality Convention as the beginning of the League of Nations programme for the codification of international law and the particular importance, therefore, of keeping the Convention free from inequalities based on sex. . . .

Not only is there an emergency because of the danger of the ratification of the Hague Convention, but there is also an emergency in that women are suffering to-day as never before in recent times, from the disastrous consequences of unequal nationality laws. . . . The result is that now, in this time of economic distress, large numbers of women who have been deprived by marriage of their own nationality are unable to get employment because they are classed as aliens even though living in the land of their birth. . . . The woman who has been in Government service finds she has lost her pension; the woman who is sick finds the State hospitals of her native country closed to her; the woman who is destitute finds she has no claim upon her own country for help."

In that part of the report to which the whole Committee agreed, the following remarks appeared:

"The League of Nations recognizes, and its mission is to recognize, the rights of all peoples, small or great. Must it not also ensure recognition of the right to liberty of all individuals without distinction of sex? Is woman to be treated as a human being whose independence cannot be sacrificed to circumstances or to the needs of a community; or is she to be dealt with merely as an object of whom any one may dispose at his pleasure?"

"Thus," the Committee concluded, "it is equitable that for women as for men there should be recognized the right to keep their nationality of origin and not to have their nationality changed except with their consent freely given in a voluntary act."

To the argument that by granting independent nationality to married women the unity of the family will be destroyed, the feminist replies that the assumption that the unity of the family depends on the spouses possessing the same nationality is a fallacy, and that even if they do, the family as a whole may not be of the same nationality, for children may acquire another nationality under the jus soli. Moreover, feminists in countries where the Common Law prevails, add two more replies. The first is to the effect that the family never has been recognized as a legal unit, the family as a family never having had any rights before the law. The second is to the effect that when the State sees fit it does not hesitate to break up the family.

Nevertheless, the League Committee on Constitutional and Legal Questions, which met at Geneva in October, 1932, while sympathizing with the view of the Women's Committee, felt that the Hague Convention contained the maximum that could be obtained at present. The League Committee expressed the hope that the States which had already signed the Hague Nationality Convention would introduce such legislation as might be necessary to give effect thereto, and would deposit

their ratifications at an early date. On October 12, 1932, the resolution submitted by this Committee was adopted by the Thirteenth Assembly of the League of Nations by thirty votes to none, with nine abstentions.

In Canada, legislation had already been passed which brought the Canadian nationality laws into conformity with Articles 8, 9 and 10 of the Hague Convention. The amendments enacted are to the following effect:

"Where a woman, who is a British subject domiciled in Canada, marries an alien, she shall not, by reason only of her marriage, cease to be a British subject, unless by reason of her marriage she acquires the nationality of her husband.

Where a man, during the continuance of his marriage, ceases to be a British subject, his wife shall not cease to be a British subject, unless by the acquisition of her husband of a new nationality she also acquires that nationality, or unless within a prescribed time she makes a declaration that she desires to retain British nationality, and thereupon she shall be deemed to have remained a British subject.

Where a certificate of naturalization is granted to an alien, his wife, if not already a British subject, shall not thereupon be deemed to be a British subject, unless, within a prescribed time, she makes a declaration that she desires to acquire British nationality, and, upon the making of such declaration, she shall be deemed to be a British subject."[5]

This legislation came into force on January 15th, 1932. Since then, it is said, difficulties have arisen in Canada due to the non-disclosure of the new laws to the wives of naturalized aliens. It should also be remembered that this legislation only applies to British subjects who are Canadian nationals, and, it is submitted, that in so far as nationality is retained or acquired under this act otherwise than in accordance with the British Nationality and Status of Aliens Acts, 1914-1922, the person so retaining or acquiring British nationality will only be a British subject within the Dominion of Canada, and will not be recognized as such in other parts of the British Empire.

Thus, this thorny question of the nationality of married women has broken the unity of the nationality laws of the Empire, and, as yet, the statesmen of the Empire have been unable to find a common solution. However, very recently the United Kingdom has taken a step in the same direction as that taken by Canada. On November 17, 1933, the royal assent was given to the British Nationality and Status of Aliens Act, 1933, the purpose of which is to give effect to the terms of the Hague Convention relating to the nationality of married women. The terms of the Act are similar to those of the Canadian Act.

[5] See the Minutes of the First Committee (Constitutional and Legal Questions) 1932, in the League of Nations Official Publications, Special Supplement No. 105, at pages 26-27, where the remarks of Mr. Cahan will be found.

Meanwhile, it has proved impossible to alter radically the nationality laws by the complete removal of the disabilities of married women, though the matter has been discussed with the Dominion Governments on several occasions. However, it is sincerely hoped that a common adherence to the terms of the Hague Convention will restore the unity of the nationality laws throughout the British Empire.

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