THE NEW SWEDISH MARRIAGE LAW. 1915—1920.

By Fru Elizabeth Nilsson.

LA NOUVELLE LOI ITALIENNE DE 1919 SUR LE MARIAGE, L'ACCÈS AUX PROFESSIONS ET LA SITUATION CIVILE DE LA FEMME.

By Dr. Margherita Ancona.

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During the last century there has existed in Sweden a movement to endeavour to attain a uniform legislature wherever possible throughout the three Scandinavian countries—Sweden, Norway and Denmark. As far as possible the civil law and practically the whole of the domestic law aim at being Scandinavian, when the modern views and the new principles now produced are accepted by the respective legislative houses of the countries. This thought has, of course, resulted in the fact that one cannot build entirely on the tradition, idea of justice and legislature of one country; but the new laws thus arising from this thought are to a certain extent compromises between the closely-related Scandinavian laws, and the new principles built thereon.

The Swedish law which has now undergone a reform dates from 1734, at which date the principles of law then in force were arranged into our Swedish Code. Little, but important, changes have from time to time been made, but on the whole the law has remained much the same. That it was antiquated appears from its date, but that it could have survived so long is a good testimony to the structure of our old Swedish law.

The co-operation between the three Scandinavian countries has resulted in the acceptance of the whole of the Domestic Law by the Swedish Riksdag.

The first part of our new Marriage Law, that part concerning marriage and divorce, was passed in Sweden in the parliament of 1915, and in contradistinction to the old law, has given room for the following principles :—

There is only one kind of marriage, consummated by an optional ecclesiastic or civil ceremony. We had previously in Sweden what was known as "incomplete marriage," where a woman was made pregnant under the promise of marriage or betrothal in certain forms. This latter institution has been removed. A promise of marriage is not more binding judicially than any other kind of promise. It can be broken without any consequence. Damages can be awarded by the court only if one of the parties has suffered any pecuniary loss on account of a breach of promise of marriage. The damages are calculated on the usual grounds.

When marriage has been consummated it can be dissolved on the agreement of both parties after a legal application. Still, such a dissolution of marriage must take place in two stages. First, the court must pronounce a judicial separation, that is to say, a separation between husband and wife for one year. Then, when proof is pronounced before the court that the parties have not lived together during that time a final *decree nisi* is granted.

If, however, one of the parties wishes to be divorced, but cannot come to an arrangement with the other party

the court can grant either a temporary separation to be followed by divorce, or final divorce at once, but the court must see to it that adequate reasons for separation or divorce be produced.

The commonest grounds for a judicial separation are :—

Grave and continual disagreements.
Drink, and
Neglect of maintenance.

For divorce :—

Adultery.
Venereal diseases, if one party knowingly exposes the other to contagion.
Three years' absence, or under certain conditions, two years' absence.

In spite of the modern construction of the law we have, nevertheless, been compelled to retain a curious institution called "mediation," whereby a clergyman or another person appointed by the court has to try to conciliate the husband and wife petitioning for divorce.

In the same manner as the husband is bound to support his wife, the wife can be made to contribute her share in the maintenance of her husband.

The court can decree which of the married couple shall have the care of the children, and for this reason the court must procure full proofs as to which of the two is the more proper person for this task.

This portion of the Marriage Act has now been in force for about four years, and has on the whole worked quite satisfactorily.

The parliamentary session of 1920 had to vote on one part, and, in my opinion, the most important part, of the Domestic Law, namely, that part dealing with the personal and economic conditions of marriage.

Anyone who thinks a little about this subject will undoubtedly agree with me that this matter is one of the most difficult things to arrange. Here we must have regard for the conjugal unity where it is of the greatest importance that husband and wife have interests in common, but where the present times demand a certain independence, both personal and economic.

For the sake of comparison it may be necessary in a few words to touch on the institution which we have fought for such a long time to do away with, namely, the husband's guardianship of the wife.

The unmarried Swedish woman has been fully competent in law to conclude any legal agreement, for example, to buy or sell, to the same extent as a man, but when once she got married she was placed under the guardianship of her husband, which within the home means patriarchy, and without the home means the husband's right to act instead of his wife in all economic matters. The husband has been able to have command over his wife's person, to prescribe to her where she is to reside, etc., but he has however, only had the economic means of coercion to uphold his patriarchy. The wife has been unable to make any

legal or economic agreements which were not confined to the sphere of the home, the husband has been responsible for her acts before the court when this was necessary.

The consequences of this guardianship have been such that no Swedish husband has been in a position to enforce his rights to their full extent, and therefore only a very small minority of Swedish wives has been aware of the consequences of the law concerning the husband's guardianship.

This guardianship has now been abolished in the New Marriage Act passed in 1920. By this Act the wife becomes a personally free being, disposing of her energy and administrating her estate with exactly the same rights as her husband.

She has become a *mother* to her children to such a degree that she has the same right as her husband to decide about their welfare.

On account of the fact that both the parties in a marriage are as two persons, severally sufficient in law, where one does not represent the other, neither of them having the sole rights of decision, legal proceedings are possible between husband and wife, that is to say, disputes which cannot be mutually settled can be regulated by law. However, in order to prevent abuse of the public courts of justice, other than in very urgent exigencies, a new institution, "mediation," bars the way for legal proceedings. The purpose of this mediation is to try, before a dispute is drawn before the court, to settle the matter amicably—a kind of arbitration, but having no executive effect.

As both husband and wife are bound to support each other, either of them neglecting his or her duty can be compelled by the court to certain duties of maintainance.

Much scepticism has been expressed about the possibility of drawing a third party into such an intimate institution as marriage : it has been said that if matters go so far between the husband and wife, then a divorce is better. The verdict on this question has not yet been given. There are always strong and binding reasons to continue a marriage, even if certain serious disputes have arisen.

The Swedish Legislature has tried, in the wording of the new Act, to avoid the use of the words "husband" and "wife," whose duties and rights are in opposition to one another, they have endeavoured to make the duties as well as the rights the same for both parties, and we therefore seldom find the words "husband" and "wife" in the text of the new Act ; the word "party" is nearly always used instead.

Both parties have, therefore, as has been said, their duties of maintenance, but if the wife works at home, her work there shall be reckoned as composing her share in the support of the family. This consideration has by the critics been called "wife's wages," something like servant's wages. The Swedish woman has not been scared by this, but is thankful that this clause has been introduced into the Act, for it has a certain importance, and will certainly not lower the wife to the status of the servant.

Both parties decide in concert with reference to the children, neither of them having the preference or sole rights of decision. If the children, however, possess any property the father is the guardian.

The wife has to take her husband's family name, but she has the right to use, after application, her husband's and her own maiden name in conjunction.

The clause concerning the estates of the husband and wife has caused the greatest trouble.

We have not asked for the absolute separate estate, this being outside the historical development of our law. We do not desire its consequences—viz., the husband rich, the wife poor, or *vice versa.*

We have had the absolute common estate, where the whole estate was placed under the dominion of the husband, We desired to escape some of its consequences.

We wanted to get a uniform system, not several optional systems. We are accustomed to have one system as the rule, but to which exceptions could be made by a special legal act—*e.g.*, deed of marriage.

I shall endeavour briefly to give you an idea of the system, to my mind quite an original system, which was the result of the work of the committee and which was passed by the Swedish Parliament.

On the contraction of marriage the estates of both the husband and wife are combined—that is to say, such estates as do not by agreement acquire the character of private estate—into one collective estate of which the husband owns one-half and the wife the other half. The husband and wife administer the estate that he or she brought into the marriage. Each of them has to give an account to the other of his or her administration, for both have an economic interest in each other's administration, for whether the estate has increased or decreased, should a distribution of the estate become necessary from any cause, divorce or death, each of them owns one-half of their combined estates. Let me give you an example of what I mean. The wife brings in £10,000, administrates and increases this sum so that at the distribution it has grown to £20,000. The husband brings in, let us say, £25,000, which sum has grown to £70,000 at distribution. When she married the wife possessed half the estate she brought in, £5,000, and half the estate her husband brought in, £12,500, together £17,500. The husband possesses an equal share. On distribution of the estate they each own a half of the combined estates, no matter which of them has administered best; each possess £45,000 on distribution.

The new thing in this system is the combination of unity, the union of the husband's and wife's marriage portions into one joint-estate and the different administrations of their estates.

The advantage of having a common interest in a marriage, both inwardly and outwardly, is apparent to all.

What is administered for the common interest of both is called the "husband's and wife's marriage portions."

The husband's and wife's marriage portions is not private

estate. Private estate can be obtained by a marriage settlement, by gift or will, given under the condition that it shall be private property.

The administration of the estate brought into marriage is not absolute. Thus, the husband or wife cannot mortgage such an estate unless both of them sign an agreement, which must be attested by witnesses. If such a debt is made, the deed is not legal, and the third party has no one to blame but himself.

Such husband's and wife's portions as have to do with the household or working conditions may not be sold by the administrator unless the consent of the other party is obtained in writing. Example : The husband is a carpenter and his wife a dressmaker. The husband cannot sell his planing-machine nor the wife her sewing machine without the other party's written consent, attested by witnesses.

The husband and the wife answer for debts contracted before and during the existence of the marriage with his or her marriage portion.

For household debts they are conjointly responsible. Debts of this kind are prescribed over against the wife for two years after their contraction.

Any agreement between husband and wife can be made during an existing marriage, but such an agreement, if it is of any importance, shall be publicly entered in a register. Marriage portions can thus be transferred into private estate or *vice versa.* Savings made by one of the parties can be transferred to the other's estate. Such agreements must, of course, be in writing and attested.

An agreement between husband and wife is illegal when one of them has transferred his or her rights of administration without having the power to recover this right. Both husband and wife have, thus, the right at any time and without any condition to revoke a mandate of administration.

This clause was introduced into the Act in order to prevent the present guardianship from being introduced, as it were, by the back door.

This is the legal system. By agreement the system of absolute private estate can be introduced into marriage.

When there are no children after the decease of husband or wife the survivor becomes the heir of the deceased, the only possible competitors for the inheritance being the parents of the deceased if they are living.

What Swedish men have now done for the Swedish woman by this gift, a gift voluntarily given, cannot be too highly appreciated, and I think that only those who know the Swedish peasant with his great confidence in his own ability to manage his native soil, will be able to understand what a step upwards he lifts the Swedish woman, his wife, when he places her at his side in the management of their common estates, binding himself when making any sale or mortgage to ask her advice and to let her absolute veto decide.

ELISABETH NILSSON.

LA NOUVELLE LOI ITALIENNE DE 1919 SUR LE MARIAGE, L'ACCÈS AUX PROFESSIONS, ET LA SITUATION CIVILE DE LA FEMME.

By Dr. Margherita Ancona.

Il y a à peine quelques mois nous étions sûres d'une victoire suffragiste complète : la dissolution de la Chambre, en faisant tomber la loi déja votée par les Députés et dont l'acceptation par le Sénat était tout à fait sûre, nous à ôté ce que nous croyions avoir dejà conquis, et notre déception a été si grande que nous ne pouvons plus apprécier ce que nous avons obtenu, c'est à dire cette *loi* Sacchi pour laquelle les suffragistes italiennes ont travaillé pendant des dizaines d'années et qui nous aurait remplies de joie si elle nous avait été donnée lorsqu'elle nous avait été promise, il y a six ou sept ans.

Je tâcherai tout de même d'expliquer aussi clairement que possible la nouvelle condition de la femme italienne, condition que nous croyons tout à fait provisoire puisqu'elle devra changer aussitôt que nous aurons le vote.

La loi fondamentale du Royaume d'Italie (le Statut de Charles Albert) ne fait aucune différence entre les hommes et les femmes : mais l'habitude et l'influence des anciens codes et surtout du code Napoléon n'ont pas permis aux compilateurs de notre code civile l'application intégrale du principe égalitaire du Statut. En effet tandis que la femme non mariée et majeure était tout à fait libre, la femme mariée ne pouvait pas déposer de ses biens sans l'autorisation expresse du mari. Cette *autorisation maritale* pouvait être donnée une fois pour toutes par le mari (c'est le cas des femmes commerçantes qui ont tous les droits des hommes commerçants y compris le droit de vote et l'éligibilité aux chambres de commerce) ; mais généralement le mari donnait son consentement (ou il ne le donnait pas !) chaque fois que la femme devait acheter, vendre, faire une donation ou une hypothèque, etc.

L'abolition de l'autorisation maritale est le premier point de la loi Sacchi : elle ne regarde pas la dot, mais seulement les biens de la femme en dehors de la dot.

Il ne faut pas croire pourtant que cette reforme intéresse seulement les femmes mariées et riches, auxquelles elle donne les mêmes droits économiques des femmes non mariées : l'incapacité écononomique des femmes mariées avait des conséquences bien fâcheuses pour toutes les femmes. En effet on disait que si une femme mariée ne peut pas administrer ses biens, elle ne peut pas s'occuper des biens des autres ; si elle est mariée, parce qu'elle l'est, si elle n'est pas mariée parce qu'elle pourrait bien se marier. Pour cette raison il y avait un grand nombre d'emplois et

de carrières qui étaient défendues aux femmes ; par exemple, elles ne pouvaient pas être archivistes en chef parce qu'elles ne pouvaient pas faire d'essai de documents, ce qui est une des charges des Directeurs des archives de l'état.

L'interprétation du principe de l'incapacité de la femme mariée est allée si loin qu'il y avait un hôpital dans une très grande ville d'Italie où lés chirurgiens ne croyaient pas pouvoir couper une jambe à une femme sans la permission écrite du mari.

Les professions auxquelles les femmes n'étaient pas admises (toujours pour la raison de l'autorisation maritale) étaient celles d'avoué, d'avocat et de notaire. Maintenant toutes les professions leurs sont ouvertes.

La question des emplois est plus compliquée ; la loi Sacchi telle qu'elle a été votée par le Parlement dit que tous les emplois sont accessibles aux femmes, à l'exception de ceux qui comportent le *jus imperii* ou l'usage des droits politiques, ou qui ont rélation avec la défense militaire du pays. Un règlement public, il y a quelques mois, par une commission dont faisaient parti deux femmes, nous donne la liste des emplois qui ne sont pas ouverts aux femmes. On a dit beaucoup de mal du règlement et de la Commission ; je crois que, étant donnée la loi, le règlement ne pouvait pas être beaucoup meilleur. Il s'agissait de voir quels employés ont le *jus imperii,* ou peuvent user des droits politiques ; et la commission avait une tâche qui n'était pas feministe, mais seulement juridique.

Par ce règlement les femmes ne peuvent pas être *capitaine* de la marine marchande ; ni directeur des banques de Sicile et de Naples, de l'Institut National des assurances, des compagnies hydrauliques de Venise et de Mantoue,du Consortium du Port de Gènes ; elles ne peuvent pas être préfet, ni directeur général d'une des grandes branches de l'administration publique ; elles sont exclues de tous les emplois militaires ou qui nécéssitent l'usage des armes (y compris la police, la garde des prisons, etc.), et de ceux qui dépendent du conseil de l'état du ministère de l'émigration. De même elles ne peuvent pas être appointées aux charges supérieures du ministère de l'intérieure, à la direction de la police et de l'administration politique.

Cette énumeration est assez longue et l'exclusion des femmes de certains emplois (notamment du commissariat de l'émigration, de la police, de la magistrature) est aussi condamnable au point de vue social qu'au point de vue féministe. Mais il ne faut pas oublier que le nombre des emplois qui ont été ouverts aux femmes est bien grand et que la loi Sacchi devra être changée le jour ou nous aurons le vote ; ce jour est peut-être très loin, mais il ne serait jamais venu sans cette loi même, puisqu'elle à ôté l'autorisation maritale qui était dans l'opinion de nos législateurs le principal (peut-être le seul) empêchement à la concession des droits politiques aux femmes. Ils croyaient en effet que la jouissance complète des droits civils est une condition nécessaire pour jouir des droits politiques.

Le dernier point de la loi Sacchi n'a pas besoin d'être expliqué ; non seulement les mères, les aïeules et les tantes non mariées qui étaient admises par le code à exercer la tutelle de leurs enfants, ou neveux, mais toutes les femmes ont la complète jouissance des droits de tutelle.

Voici en resumé notre condition civile :—

(1) Nous avons toutes les possibilités d'études.

(2) Nous avons accès à toutes les professions liberales.

(3) Nous pouvons être appointées à presque tous les emplois publics avec les mêmes droits et les mêmes appointements que les hommes.

(4) Nous pouvons exercer la tutelle, être témoin, arbitre, etc.

(5) Nous pouvons disposer librement de notre argent à l'exception de la dot.

Il va sans dire que nous ne sommes pas contentes : ce que nous voulons c'est l'application intégrale du principe égalitaire du statut de Charles Albert en commençant par le droit du vote.

Margherita Ancona.

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