A

MEMORANDUM

on the

NATIONALITY OF WOMEN

for submission to

THE IMPERIAL CONFERENCE

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THE NATIONALITY OF WOMEN.

Memorandum for Submission to the Imperial Conference of 1930, by the Nationality Committee, of the Six Point Group, 92, Victoria Street, S.W. 1.

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THE INTERNATIONAL SITUATION.

At the International Conference on the Codification of International Law, the following Articles were included in the Convention on Nationality, which was adopted.

Art. 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 her husband.

Art. 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 the husband's new nationality.

Art. 10. Naturalisation of the husband during marriage does not involve a change in the nationality of the wife except with her consent.

Art. 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 her country of origin. If she does recover it, she loses the nationality which she acquired by reason of the marriage.

These four Articles which have been accepted by the International Conference on the Codification of International Law are now waiting ratification by national Governments.

They :

1. Deny adult status to a married woman in regard to her nationality.
2. Burden her with practical disabilities and difficulties in addition to humiliating her by giving her a low status.
3. Write into a new international code of law a principle which the piecemeal legislation of nearly every country in the world has been for some years past rejecting.

It is vitally important that the British Empire, through its Imperial Conference, should oppose the ratification of these Articles.

The International Conference, after passing the Convention including the four Articles, passed the following Recommendation:

> The Conference recommends to the Governments the study of the question:
>
> 1. Whether it would not be possible to introduce into their law the principle of the equality of the sexes in matters of nationality, taking particularly into account the interests of the children; and
> 2. Especially to consider how far it is possible to decide that in principle the nationality of the wife should not be affected without her consent either by the mere fact of marriage or by any change in the nationality of her husband.

This Recommendation is valuable and is important for consideration by the Imperial Conference.

Furthermore, after signing the Nationality Convention including the four Articles, the leader of the British Delegation, in Plenary Session of the Conference, stated that the British Government was in favour of applying the principle of the equality of the sexes in matters of nationality.

THE IMPERIAL CONFERENCE.

There is no question more urgently in need of being correctly settled by the Imperial Conference than that of the Nationality of women.

The British Nationality and Status of Aliens Act, with its Amendments, 1914-1922, is a law designed to lay down rules to determine nationality that is common to the Empire as a whole and so framed that while Parts I. and III. apply to all the Dominions, Part II., dealing with naturalisation only, was expressly reserved for adoption or rejection by each Dominion. This elasticity was especially designed so that the law might be as workable as possible in its application to the whole Empire.

Feeling is very strong in the Dominions generally against the principle of thrusting women on marriage from one nationality to another, like pawns on a chess board, and further of taking away from a woman during the continuation of her marriage the privilege of expatriation and of seeking naturalisation elsewhere, which is now the privilege of the adult male, and of the unmarried woman.

In each Dominion and in Great Britain, however, when the question is raised in Parliament, nothing is done because of the disinclination to upset the unity of the Imperial law.

If the parts of the British Empire cannot act separately, the

obvious channel is agreement in the Imperial Conference. If the matter is postponed until a subsequent Imperial Conference the danger arises of independent action. It is useless to pretend that feeling will not have developed in that time to the extent of definitely overthrowing the principle of the incapacity of the married woman with regard to her nationality. Legislation will probably come in some parts of the Empire independently, thus upsetting the principle of Imperial Nationality. This would be unfortunate for those who have at heart the Unity of the Empire.

On the other hand, from the women's side, it would be a drastic set-back if the Imperial Conference were to adopt the four Articles, as the Convention would then probably be ratified immediately by the Governments of each Dominion and of Great Britain. There is every danger that if this happens the principle will be incorporated into the new International Code of Law. The time is most critical.

A. For those who care for the Empire.
B. For those who care for the interests of Women.

ARGUMENT.

There is no reason why the British Commonwealth of Nations should retain the principle of a complete lack of status for women in regard to their nationality.

No foreign woman obtained British nationality by marriage in any part of the Empire before 1844, and no British-born woman lost her nationality through marriage to a foreigner before 1870. The very beginning of such a status was less, therefore, than a hundred years ago.

The principle has, in fact, had a short run, for already the British Nationality and Status of Aliens Act of 1914-1922 has had to limit it.

A. A British-born woman who has assumed the nationality of her husband and has thereby become an enemy alien is free to re-acquire her British-born status by naturalisation after dissolution of marriage ?

B. When a man during marriage ceases to be a British subject, his wife shall thereupon cease to be a British subject, but it shall be lawful for her to make a declaration that she desires to retain British nationality.

C. The British-born wife of a British naturalised subject whose nationality is revoked, does not thereby lose her British nationality, unless through some act of her own she is expressly included in the Revocation Order at the discretion of the Secretary of State.

D. Special facilities are given to a British-born woman to re-acquire her British nationality on the death of her husband, by naturalisation.

At the Imperial Conference in 1926, it was recommended that in cases of permanent separation between husband and wife, the same facilities should be given and the British-born woman allowed to re-acquire her British nationality, but this has nowhere in the Empire become law.

Why not sweep away a principle

A. Which is new—less than a hundred years old ?
B. Which every few years it is necessary to modify in the direction of denying it ?
C. Which in nearly every country in the world is being either denied altogether or modified ?
D. Which is ultimately bound to go ?

The women of the British Empire have no desire to dissolve the unity of the law of nationality throughout the Empire. If, however, they are denied such obvious justice from the Conference of the Empire, is it to be wondered at that they will begin to be indifferent and bring pressure upon their separate Governments, caring little if that unity remains ? They cannot wait for ever. If they cannot get justice from the Empire, then they may be able to get it from their own separate parts of the Empire.

The feeling in the world at large is indecisive. The International Conference at the Hague passed a reactionary convention —then it immediately passed a Recommendation along the most advanced lines. Great Britain signed the reactionary Convention —then the British Delegation, on advice from the home Government, declared itself to be in favour of equality between the sexes. The women of the British Commonwealth must not let the pendulum swing to the wrong side.

It is fitting that the Commonwealth of nations comprising the British Empire should take the lead in this matter. It is probably the most powerful unit in the world. It would be an act of grace so to do. The British countries have not even the difficulties to contend with that many countries have. In the British Empire, the law of *jus soli* is preponderant over that of *jus sanguinis* thus simplifying most questions with regard to the nationality of children. Moreover, the English legal system attaches more importance to domicile and residence than to nationality, so that a definite incorporation of the principle of the independent nationality of women would result in less disturbance of the personal and property rights of individuals than elsewhere.

Legislation all over the world on the subject of the nationality of women has crowded the last ten years. It is all in the direction of giving them independence.

In Russia in 1918 and in the United States in 1922, the right of a woman to an independent nationality was recognised, though it is true that in the United States she still remains under certain disabilities.

In 1926 Belgium by law allowed a woman on marriage to retain her own nationality by declaring her desire to do so.

Albania, China, Roumania, Sweden, Norway, Denmark, Finland, Ireland, France, Turkey, Yugo-Slavia, have all passed laws in the last eight years providing that their women who marry foreigners may, with certain exceptions, keep their own nationality. Most of the South American Republics have passed definite laws to that effect also, although in their case the laws on the subject had in many cases previously not been clear.

Many of the countries of Europe and the East now have laws providing that their women who are nationals shall keep their nationality if they do not on marriage acquire the nationality of their husband. The main exceptions are Great Britain, Hungary, the Netherlands, Palestine, and Spain.

In some countries the naturalisation of a foreign husband is facilitated by marriage with a woman national. Among these are Belgium, France, Italy, Roumania, Spain, Portugal and Japan.

The above facts, though by no means a complete statement, are sufficient to show what a mass of legislation there has been all over the world of late years. If anyone is in doubt as to the direction in which it is all tending, the shortest contemplation will be convincing that it is all towards the independent nationality of women.

In adopting this principle, the British Empire would not be at variance with the world. She would help to unify the law and to facilitate its administration.

The two arguments chiefly used against giving women their independent nationality are :

1. The difficulty of administration where members of a family have different nationalities.
2. The tendency to promote disharmony in family life.

To go back to the first argument, how can the present system possibly make administration easy ? Where every country has a different law from its neighbour and then denies it by exceptions and modifications, the mass is so vast and intricate that it is bewildering. Not only are there different laws and different exceptions in each country, but the pressure of women is so great that they are constantly being changed. There is nothing simple about such a situation as this. Under such circumstances, even if the four Articles of the Hague Convention were ratified by every nation, they might no doubt prevent women becoming stateless, but it is most improbable that they would prevent the acquisition of dual or triple nationality which is almost as undesirable.

But taking the law of the British Empire alone, the family is not now a unit of nationality. Three definite cases when a wife living with her husband has a different nationality from him have been quoted above. Furthermore, the children of British parents

of the second generation born abroad, unless they have been registered at a diplomatic agency, lose their British nationality and under the *jus soli*, foreign parents whose children are born here also have a different nationality from their children who under our law are British. It may easily be that as matters are now, husband, wife, and children all have to apply to separate diplomatic agencies. The unit of the family for purposes of nationality is not now and in truth never was an established fact.

As for the harmony of the family, it surely depends upon the degree of feeling and attitude rather than upon legal status. There is no state law now to prevent people of different religions from marrying each other. Sometimes religion forms a point of antagonism between people. Sometimes it does not. If the legal position had any effect upon the compatibility or antagonism of people, the fact that one person should have to assume a nationality which is repugnant would probably augment the irritation rather than diminish it. The old idea of creating harmony by making the wife a cipher has gone by.

Surely we value our Empire too much to go on allowing foreign women who have made no declaration, sworn no oaths except those incidental to matrimony, accepted no responsibilities and received no particular education, to step, through an act of marriage, into all the privileges and responsibilities of British-born citizens. Since these laws were made, the political power of women, for good or evil, has increased enormously. The right of British citizenship cannot be given away as a thing of no value.

From the points of view, therefore, of imperial unity and prestige as well as of grace and justice, we urge the Imperial Conference not to let slip this opportunity when the time is so critical, of promoting the happier relations of people in this world and the smoother working of laws.

We urge the Imperial Conference to recommend the exclusion of the four Articles, Nos. 8, 9, 10, 11, from the Ratification of the Hague Convention passed by the International Conference for the Codification of International Law in April, 1930, and to recommend instead the immediate initiation of Empire-wide legislation putting into effect the Recommendation made by the same International Conference and the expression of belief in the principle of the equality of the sexes in matters of nationality publicly made by the representative of Great Britain on the same occasion.

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