

3. The existing British law relating to the nationality of married women is statutory, and is based on the principle of a common nationality for husband and wife. The matter was first dealt with, partially, in the Naturalization Act, 1844; next, more completely, in the Naturalization Act, 1870; and now by section 10 of the British Nationality and Status of Aliens Act, 1914, in which the general rule is expressed as follows: The wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien. This rule is followed by the majority of civilized countries, though the Legislature of the United States of America has recently reversed it.

4. Previously to the statutes quoted, and under the common law of England, British nationality could neither be acquired nor lost by marriage. This position does not seem to have been the result of any deliberate policy of the law in favour of independent nationalities for husband and wife, but followed incidentally from the application of the two general rules which at common law governed our nationality law. Thus, in the first place, women, equally with men, were subject to the general rule *Nemo potest exuere patriam*, and as the result of this rule a British woman could not divest herself of her British nationality by the voluntary act of marriage. Secondly, the principle governing the acquisition of British nationality at common law was "birth within the allegiance," and British nationality could not be acquired in any other way. To this rule the voluntary act of marriage was no exception, and accordingly an alien woman did not at common law acquire British nationality on marriage to a British subject.

5. To the above general rule, quoted from the Act of 1914, there are certain important exceptions (some contained in the Act of 1914 originally, and others introduced by the amending Act of 1918). These exceptions are—

- (a.) Where a British subject, during the continuance of his marriage, becomes an alien by naturalization or otherwise, his wife can remain British if she makes a declaration of her desire to do so. (British Nationality and Status of Aliens Act, 1914, section 10.)
- (b.) The British-born wife of any alien who is the subject of a State at war with His Majesty can become British by the grant of a certificate of naturalization upon a declaration by her that she wishes to resume British nationality. (Amendment of section 10 of the above Act by the Act of 1918.)
- (c.) The wife of a naturalized British subject whose certificate is revoked retains her British nationality unless the order of revocation directs that she shall cease to be a British subject. (Section 7A of the principal Act, inserted by the Act of 1918.)

6. In April, 1922, a Bill was introduced into the House of Commons by Sir John Butcher in which it was proposed to make important alterations in the existing law, and to provide, *inter alia*, that a British woman shall not lose her British nationality by marriage with an alien, and that an alien shall not acquire British nationality merely by marriage with a British subject. This Bill was referred to a Select Committee of the House of Commons for examination and report, but the proceedings of the Committee were interrupted before any report was made by the dissolution of Parliament.

7. In 1923, on the motion of Sir John Butcher, a joint committee of both Houses of Parliament was appointed "to examine the British law as to the nationality of married women; to consider in their legal and practical aspects the questions involved in the possession by husband and wife of the same or of different nationalities; and, with due regard to the operation of the laws of foreign countries, to report what, if any, alteration of the British law is desired."

8. This committee, after hearing a considerable amount of evidence, was unable to agree as to the form of a report. The proceedings of the joint committee have not yet been published,\* but advance copies of a portion of the proceedings, containing two alternative draft reports which were laid before that committee (one by the chairman and one by Sir John Butcher), have been secured for the use of the Imperial Conference. These draft reports disclose numerous considerations which may be advanced in favour of or against any substantial alteration of the existing law.

9. A summary of the points and arguments urged in favour of an alteration of the law will be found in paragraph 9 of the chairman's report. It may be stated generally that the main arguments proceed from (a) the demand of various women's organizations that married women should have the same right as men of individual choice and self-determination in respect of their national status; and (b) the special grievances of British-born women who have become aliens by marriage, and are subject, as such, to certain disabilities and incapacities—*e.g.*, franchise disqualification.

10. As regards (a), it has to be considered, *inter alia*, whether the theoretical value of the principle of self-determination is not outweighed by the practical disadvantage (affecting, *inter alia*, the children) involved in a difference of nationalities between the parents, disadvantages ranging from the regions of diplomatic protection and private international law to the position of the family as a unit of society (see paragraphs 10 and 11 of the chairman's report and the second section of Sir John Butcher's report).

11. As regards (b), it has to be considered whether the disabilities and incapacities in question are such as to justify a change in the law of nationality, or whether a remedy for most, if not all, of the grievances of British-born women cannot be found in specific legislative provisions dealing with the particular subject-matter (see paragraphs 10 (i) and 14 of the chairman's report).

Home Office, October, 1923.

#### PART 4. — VALIDITY OF MARRIAGES BETWEEN BRITISH SUBJECTS AND FOREIGNERS.

CORRESPONDENCE BETWEEN THE SECRETARY OF STATE FOR THE COLONIES AND THE GOVERNOR-GENERAL OF THE COMMONWEALTH OF AUSTRALIA.

(a.) From the GOVERNOR-GENERAL to the SECRETARY OF STATE.

(No. 381.)

SIR,—

4th October, 1922.

I have the honour, at the instance of my Prime Minister, to inform you that a question has been raised in regard to the validity of marriages contracted between Australians and foreigners.

\* Since published as House of Commons Paper No. 115 of 1923.