

ince or at a distance of more than 100 miles from the place where the Court is held.

(b) That the necessity of the witnesses' testimony shall be shown by affidavit.

3. The failure to order the issue of this commission will cause plaintiffs' serious prejudice, and the granting of the commission will cause opposite party no prejudice.

The Court of Appeal granted both Rogatory Commissions:

*Sir Louis A. Jetté, C. J.*, delivering the unanimous judgments of the court, said "that his personal opinion would have been to dismiss the two motions as the reasons given why they should be granted are inadequate.

"But once the learned judge of the court below allowed a commission to issue to the United States there was certainly no possible objection to allowing the other one to England to issue also.

"The same arguments applied to both motions, and they should have been granted or disallowed together.

"As the question is one respecting evidence which may or may not be found to relevant, the appeal is allowed, but the costs on the appeal will follow the event of suit."

*A. Falconer, attorney for appellant.*

*Brown, Montgomery & McMichael, attorneys for respondent.*

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**NOTES.** — *Willis vs Price*, 2 L. C. J., p. 77. — A motion for a *commission rogatoire* was opposed on the ground that it was not supported by any affidavits shown," that the testimony required was material and necessary to establish certain facts.

*Day, J.* — "I know of no practice requiring such affidavit or any affidavit whatever. The motion is in my opinion one of right and must therefore be granted."