NOTIFICATION EFFECTED BY AN

EXCHANGE OF NOTES

(March 1 and 23, 1939)

EXTENDING TO CANADA AS FROM APRIL 1, 1939

THE CONVENTION

BETWEEN

HIS MAJESTY

AND

THE REGENT OF THE KINGDOM OF HUNGARY

REGARDING

LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS

Signed at Budapest, September 25, 1935

Ratifications exchanged at London, May 7, 1936

OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1939

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EXCHANGE OF NOTES (MARCH 1 AND 23, 1939) REGARDING THE EXTENSION TO CANADA AS FROM APRIL 1, 1939, OF THE CONVENTION OF SEPTEMBER 25, 1935, BETWEEN HIS MAJESTY AND THE REGENT OF HUNGARY REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS.

The British Chargé d'Affaires at Budapest to the Royal Hungarian Minister for Foreign Affairs

No. 22
(18/7/39)

BRITISH LEGATION

BUDAPEST, March 1, 1939.

MONSIEUR LE MINISTRE,

At the instance of His Majesty's Government in Canada I have the honour to notify to you, in accordance with Article 18(*a*) of the Convention regarding Legal Proceedings in Civil and Commercial Matters, which was signed in Budapest on September 25, 1935, the accession of His Majesty to that Convention in respect of Canada.

The attached list indicates in each case the authority to whom requests for service or for the taking of evidence should be transmitted, and the language in which communications and translations are to be made.

In accordance with Article 18(*a*) of the Convention, the accession now notified will come into force one month from the date of this note, that is to say on April 1 next.

In requesting that Your Excellency will be so good as to acknowledge the receipt of this communication,

I avail myself, etc.,

A. GASCOIGNE

Province or Territory	*Authority and Address*	*Language*
Ontario	Attorney-General, Toronto	English
Quebec	Attorney-General, Quebec	English or French
Nova Scotia	Attorney-General, Halifax	English
Prince Edward Island	Attorney-General, Charlottetown	English
New Brunswick	Attorney-General, Fredericton	English
British Columbia	Attorney-General, Victoria	English
Manitoba	Attorney-General, Winnipeg	English
Saskatchewan	Attorney-General, Regina	English
Alberta	Attorney-General, Edmonton	English
Northwest Territories	Commissioner of the Northwest Territories, Ottawa	English
Yukon Territory	The Gold Commissioner of the Yukon Territory, Dawson City	English

The British Chargé d'Affaires at Budapest to the Royal Hungarian Minister for Foreign Affairs

BRITISH LEGATION

No. 23
(18/8/39)

BUDAPEST, March 1, 1939.

MONSIEUR LE MINISTRE,

With reference to my note of today's date relative to the accession by His Majesty in respect of the Dominion of Canada to the Civil Procedure Convention signed in Budapest on September 25, 1935, I have the honour to inform Your Excellency that the operation of Article 12 of that Convention relating to security for costs is a matter of some difficulty having regard to the federal system of government operating in the Dominion.

As a result, judgments given by a provincial court are binding only in the province in which that Court has jurisdiction; and it follows that immoveable property owned by a litigant in one province of the Dominion will not be regarded as affording exemption from security for costs in respect of proceedings before a Court in another province.

I have therefore the honour, at the instance of His Majesty's Government in Canada, to propose that, in order that effect may be given in Canada to Article 12(*b*) of the above-mentioned Convention, the words "in that territory" in Article 12 shall, as regards the application of the Convention to Canada, be interpreted as relating to territory within the jurisdiction of the Court in which proceedings have been instituted.

I have further the honour to express the hope that this proposal will be acceptable to the Hungarian Government and, in that event, to suggest that this note and Your Excellency's reply in a similar sense shall be regarded as placing on record the agreement reached in this matter.

I avail myself, etc.,

A. GASCOIGNE

The Royal Hungarian Minister for Foreign Affairs to the British Chargé d'Affaires at Budapest
(Translation)

ROYAL HUNGARIAN MINISTRY OF FOREIGN AFFAIRS

76/res.-5
1939

BUDAPEST, March 23, 1939.

MONSIEUR LE CHARGÉ D'AFFAIRES,

I have the honour to acknowledge receipt of the Note No. 22 (18/7/39) and its enclosure which you addressed to me on March 1.

The text of the note is as follows:

(Text of the note)

The text of the enclosure is as follows:

(Text of the enclosure)

Please accept, etc.

By order of the Minister

DANILOVICS
Head of Department of Ministry

The Royal Hungarian Minister for Foreign Affairs to the British Chargé d'Affaires at Budapest

(Translation)

77/res.-5
1939

ROYAL HUNGARIAN MINISTRY OF FOREIGN AFFAIRS

BUDAPEST, March 23, 1939.

MONSIEUR LE CHARGÉ D'AFFAIRES,

I have the honour to acknowledge receipt of the Note No. 23 (18/8/39) which you addressed to me on March 1.

The text of the note is as follows:

(Text of the note)

Please accept, etc.

By order of the Minister

DANILOVICS
Head of Department of Ministry

CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED KINGDOM AND THE REGENT OF THE KINGDOM OF HUNGARY REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS (WITH A NOTE), SIGNED AT BUDAPEST SEPTEMBER 25, 1935.

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and His Serene Highness the Regent of the Kingdom of Hungary: being desirous to render mutual assistance in the conduct of legal proceedings in civil and commercial matters, which are being dealt with or which it is anticipated may be dealt with by their respective judicial authorities; have resolved to conclude a Convention for this purpose and have appointed as their Plenipotentiaries:

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland:

The Honourable Sir Patrick William Maule Ramsay, K.C.M.G., His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Budapest;

His Serene Highness the Regent of the Kingdom of Hungary:

M. Kálmán Kánya de Kánya, Royal Hungarian Minister for Foreign Affairs;

Who having communicated their full powers, found in good and due form, have agreed as follows:—

I.—*Preliminary*

Article 1

(*a*) This Convention applies only to civil and commercial matters, including non-contentious matters.

(*b*) In this Convention the words:

(1) "territory of one (or of the other) High Contracting Party" shall be interpreted (*a*) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, as meaning England and Wales and all territories in respect of which the Convention is in force by reason of extensions under Article 17 or accessions under Article 18; and (*b*) in relation to His Serene Highness the Regent of the Kingdom of Hungary, Hungary;

(2) "persons" shall be deemed to mean individuals and artificial persons;

(3) "artificial persons" shall be deemed to include partnerships, companies, societies and other corporations;

(4) "subjects or citizens of a High Contracting Party" shall be deemed to include artificial persons constituted or incorporated under the laws of the territory of such High Contracting Party;

(5) "subjects or citizens of one (or of the other) High Contracting Party" shall be deemed (*a*) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, to mean all subjects of His Majesty wherever domiciled, and all persons under His protection; and (*b*) in relation to His Serene Highness the Regent of the Kingdom of Hungary, all Hungarian citizens.

ARTICLE 2

Legal Protection and Access to the Courts of Justice

The subjects or citizens of one High Contracting Party shall enjoy in the territory of the other the same rights in respect of the legal protection of person or property and shall have free access to the courts of justice for the prosecution or defence of the rights under the same conditions (including taxes and fees payable) as subjects or citizens of the latter High Contracting Party.

II.—*Service of Judicial and Extra-Judicial Documents*

ARTICLE 3

(*a*) When judicial or extra-judicial documents drawn up in the territory of one of the High Contracting Parties are required by a judicial authority situated therein to be served on persons in the territory of the other High Contracting Party, such documents may be served on the recipient, by any of the methods provided in Articles 4 or 5 in cases where these articles are applicable.

(*b*) In Part II of this Convention the expression "country of origin" means the country from which the documents to be served emanate, and the expression "country of execution" means the country in which service of documents is to be effected.

ARTICLE 4

(*a*) A request for service shall be addressed and sent by a Diplomatic or Consular Officer acting for the country of origin to the competent authority of the country of execution, requesting such authority to cause the document in question to be served.

(*b*) The request for service shall be drawn up in the language of the country of execution and shall state the names and descriptions of the parties, the name, description and address of the recipient, and the nature of the document to be served, and shall enclose the document to be served together with a copy thereof.

(*c*) The document to be served shall either be drawn up in the language of the country of execution, or be accompanied by a translation into such language unless the competent authority of the country of execution declares that a translation is unnecessary. Such translation shall be certified as correct by a Diplomatic or Consular Officer acting for the country of origin or by an official or sworn translator of the country of execution or the country of origin.

(*d*) Requests for service shall be addressed and sent—
In England to the Senior Master of the Supreme Court of Judicature.
In Hungary to the Royal Hungarian Ministry of Justice.

If the authority to whom a request for service has been sent is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (*f*) of this Article) of his own motion forward the request to the competent authority of the country of execution.

(*e*) Service shall be effected by the competent authority of the country of execution, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, except that, if a wish for some special manner of service is expressed in the request for service, such manner of service shall be followed in so far as it is not incompatible with the law of that country; provided that, if the competent authority of the country of execution has declared the translation to be unnecessary

and no translation is sent, such authority may limit his action to effecting service by the transmission of the document to the recipient if he is willing to accept it.

(*f*) The execution of a request for service, duly made in accordance with the preceding provisions of this Article, shall not be refused unless (1) the authenticity of the request for service is not established, or (2) the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(*g*) In every instance where a request for service is not executed by the authority to whom it has been sent, the latter will at once inform the Diplomatic or Consular Officer by whom the request was sent, stating the ground on which the execution of the request has been refused or the competent authority to whom it has been forwarded.

(*h*) The authority by whom the request for service is executed shall furnish a certificate proving the service or explaining the reason which has prevented such service, and setting forth the fact, the manner and the date of such service or attempted service, and shall send the said certificate to the Diplomatic or Consular Officer by whom the request for service was sent. The certificate of service or of attempted service shall be placed on the copy or attached thereto.

ARTICLE 5

(*a*) This article does not apply to the service of documents on persons who are subjects or citizens of the High Contracting Party in whose territory the service is to be effected.

(*b*) Service may be effected, without any request to or intervention of the authorities of the country of execution, by any of the following methods:—

(1) By a Diplomatic or Consular Officer acting for the country of origin;

(2) Through the post.

(*c*) It is understood that the question of the validity of any service effected by the use of any of the methods referred to in paragraph (*b*) of this Article will remain a matter for the free determination of the respective courts of the High Contracting Parties in accordance with their laws.

ARTICLE 6

(*a*) In any case where documents have been served in accordance with the provisions of Article 4, the High Contracting Party, by whose Diplomatic or Consular Officer the request for service was addressed, shall repay to the other High Contracting Party any charges and expenses which are payable under the law of the country of execution to the persons employed to effect service, and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall not exceed such as are usually allowed in the courts of that country.

(*b*) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the Diplomatic or Consular Officer by whom the request was addressed, when sending to him the certificate provided for in Article 4 (*h*).

(*c*) Except as provided above, no fees of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

III.—*Taking of Evidence*

Article 7

(*a*) When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken, in any one of the ways prescribed in Articles 8 or 9, in cases where these articles are applicable.

(*b*) In Part III of this Convention, the expressions—

(1) "taking of evidence" shall be deemed to include the taking of the statements of a plaintiff, defendant, expert or any other person on oath or otherwise; the submission to a plaintiff, defendant, expert or any other person of any oath with regard to any legal proceedings; and the production, identification and examination of documents, samples or other objects;

(2) "witness" shall be deemed to include any person from whom any evidence, as defined above, is required to be taken;

(3) "country of origin" shall be deemed to mean the country by whose judicial authority the evidence is required, and "country of execution" the country in which the evidence is to be taken.

Article 8

(*a*) The judicial authority of the country of origin may, in accordance with the provisions of the law of his country, address himself by means of a Letter of Request to the competent authority of the country of execution, requesting such authority to take the evidence.

(*b*) The Letter of Request shall be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer acting for the country of origin or by an official or sworn translator of the country of execution or of the country of origin. The Letter of Request shall state the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto, the names of the parties thereto, and the names, descriptions and addresses of the witnesses. They shall also either (1) be accompanied by a list of interrogatories to be put to the witness or witnesses, or, as the case may be, by a description of the documents, samples or other objects to be produced, identified or examined, and a translation thereof, certified as correct in the manner heretofore provided; or (2) shall request the competent authority to allow such questions to be asked *vivâ voce* as the parties or their representatives shall desire to ask.

(*c*) Letters of Request shall be transmitted—

In England by a Hungarian Diplomatic or Consular Officer to the Senior Master of the Supreme Court of Judicature.

In Hungary by a British Diplomatic or Consular Officer to the Royal Hungarian Ministry of Justice.

In case the authority to whom any Letter of Request is transmitted is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (*f*) of this Article) of his own motion forward the Letter of Request to the competent authority of the country of execution.

(*d*) The competent authority of the country of execution shall give effect to the Letter of Request and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order emanating from the authorities of his own country, except that if a wish that some special procedure should be followed is

expressed in the Letter of Request, such special procedure shall be followed in so far as it is not incompatible with the law of the country of execution.

(*e*) The Diplomatic or Consular Officer, by whom the Letter of Request is transmitted, shall, if he so desires, be informed of the date when and the place where the proceedings will take place, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented, if they so desire, by any legal representatives who are competent to appear before the courts of the country of execution.

(*f*) The execution of a Letter of Request which complies with the preceding provisions of this Article can only be refused—

(1) If the authenticity of the Letter of Request is not established;

(2) If, in the country of execution, the execution of the Letter of Request in question does not fall within the functions of the judiciary;

(3) If the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(*g*) In every instance where a Letter of Request is not executed by the authority to whom it is addressed, the latter will at once inform the Diplomatic or Consular Officer by whom it was transmitted, stating the grounds on which the execution of the Letter of Request has been refused, or the competent authority to whom it has been forwarded.

(*h*) When a Letter of Request has been executed, the competent authority to whom it was transmitted or forwarded shall send to the Diplomatic or Consular Officer by whom it was transmitted the necessary documents establishing its execution.

ARTICLE 9

(*a*) The evidence may also be taken, without any request to or the intervention of the authorities of the country of execution by a Diplomatic or Consular Officer acting for the country of origin.

(*b*) The Diplomatic or Consular Officer may request the individuals named by the court of the country of origin to appear before him and to give evidence. He may take all kinds of evidence which are not contrary to the law of the country of execution. The attendance and giving of evidence before such officer shall be entirely voluntary and no measures of compulsion shall be employed.

(*c*) The evidence may be taken in accordance with the procedure recognized by the law of the country of origin, and the parties will have the right to be present in person or to be represented by any legal representatives who are competent to appear before the courts either of the country of origin or of the country of execution.

(*d*)* Unless and until a notification is given through the Diplomatic channel by the Hungarian Government, the provisions of this article will not apply to the taking of evidence from persons who are subjects or citizens of the High Contracting Party in whose territory the evidence is to be taken.

ARTICLE 10

The fact that an attempt to take evidence by the method laid down in Article 9 has failed owing to the refusal of any witness to appear or to give evidence does not preclude a request being subsequently made in accordance with Article 8.

ARTICLE 11

(*a*) Where evidence is taken in the manner provided in Article 8 the High Contracting Party, by whose judicial authority the Letter of Request was

* See note on page 13.

addressed, shall repay to the other High Contracting Party any expenses incurred by the competent authority of the latter in the execution of the request in respect of any charges and expenses payable to witnesses, experts, interpreters, or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom such authority may have deputed to act, in cases where the law of the country of execution permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the courts of the country of execution.

(*b*) The repayment of these expenses shall be claimed by the competent authority by whom the Letter of Request has been executed from the Diplomatic or Consular Officer by whom it was transmitted when sending to him the documents establishing its execution as provided in Article 8 (*h*).

(*c*) Except as above provided no fees of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

IV.—*Judicial Assistance for Poor Persons, Security for Costs and Imprisonment for Debt*

Article 12

(*a*) The subjects or citizens of one High Contracting Party, resident in the territory of the other High Contracting Party where the proceedings are brought, shall not be compelled to give security for costs or court fees in any case where a subject or citizen of such other High Contracting Party would not be so compelled.

(*b*) The subjects or citizens of one High Contracting Party, resident outside the territory of the other where the proceedings are brought, shall not be obliged to give security for costs or court fees in any case where they possess in that territory immovable property, or other property of such a nature as not to be readily transferable, sufficient to cover the said costs or fees. It is understood that the expressions "immovable property" and "property not readily transferable" must be interpreted by the respective courts of the High Contracting Parties in accordance with their own laws.

Article 13

The subjects or citizens of one High Contracting Party shall enjoy in the territory of the other High Contracting Party a perfect equality of treatment with subjects or citizens of the latter High Contracting Party as regards free legal assistance for poor persons.

Article 14

The subjects or citizens of one High Contracting Party shall not, in the territory of the other, be liable to imprisonment as a means of execution for debt or as a conservatory measure, in any case where the subjects or citizens of the latter High Contracting Party would not be so liable.

V.—*General Provisions*

Article 15

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

ARTICLE 16

The present Convention, of which the English and Hungarian texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The Convention shall come into force one month after the date on which ratifications are exchanged and shall remain in force for three years after the date of its coming into force. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other not less than six months before the expiration of the said period of three years of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given notice to terminate it.

ARTICLE 17

(*a*) This Convention shall not apply *ipso facto* to Scotland, Northern Ireland, the Channel Islands and the Isle of Man, nor to any of the Colonies, overseas territories or Protectorates of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, nor to any territories under His suzerainty, nor to any mandated territories in respect of which the mandate is exercised by His Government in the United Kingdom, but His Majesty may at any time, while this Convention is in force, under Article 16 by a notification given through His Minister at Budapest, extend the operation of the Convention to any of the above-mentioned territories.

(*b*) Such notification shall state the authorities in the territory concerned to whom requests for service under Article 4 or Letters of Request under Article 8 are to be transmitted, and the language in which communications and translations are to be made. The date of the coming into force of any such extension shall be one month from the date of such notification.

(c) Either of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of an extension of this Convention to any of the territories referred to in paragraph (*a*) of this Article, terminate such extension on giving six months' notice of termination through the diplomatic channel.

(*d*) The termination of the Convention under Article 16 shall, unless otherwise expressly agreed to by both High Contracting Parties, *ipso facto* terminate it in respect of any territories to which it has been extended under paragraph (*a*) of this Article.

ARTICLE 18

(*a*) The High Contracting Parties agree that His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, may at any time, while this Convention is in force, either under Article 16 or by virtue of any accession under this Article, by a notification given through the diplomatic channel, accede to this Convention in respect of any other Member of the British Commonwealth of Nations whose Government may desire that such accession should be effected, provided that no notification of accession may be given at any time when His Serene Highness the Regent of the Kingdom of Hungary has given notice of termination in respect of all the territories of His Majesty to which the Convention applies. The provisions of Article 17 (*b*) shall be applicable to such notification. Any such accession shall take effect one month after the date of its notification.

(*b*) After the expiry of three years from the date of the coming into force of any accession under paragraph (*a*) of this Article, either of the High Contracting Parties may, by giving six months' notice of termination through the diplomatic channel, terminate the application of the Convention to any country

in respect of which a notification of accession has been given. The termination of the Convention under Article 16 shall not affect its application to any such country.

(*c*) Any notification of accession under paragraph (*a*) of this Article may include any dependency or mandated territory administered by the Government of the country in respect of which such notification of accession is given; and any notice of termination in respect of any such country under paragraph (*b*) shall apply to any dependency or mandated territory which was included in the notification of accession in respect of that country.

In witness whereof the undersigned have signed this Convention, in English and Hungarian texts, and have affixed thereto their seals.

Done in duplicate at Budapest the 25th day of September, 1935.

(L.S.) PATRICK RAMSAY

(L.S.) C. DE KÁNYA

NOTE

The British Minister at Budapest to the Royal Hungarian Minister for Foreign Affairs

BRITISH LEGATION

BUDAPEST, September 25, 1935.

MONSIEUR LE MINISTRE,

With reference to Article 9 (*d*) of the Civil Procedure Convention signed to-day, His Majesty's Government in the United Kingdom recognise that the question of the giving of the notification, provided for in that paragraph, is a matter entirely within the discretion of the Hungarian Government, and that no assurance has been given that it will be possible for them to give this notification.

I avail, etc.,

PATRICK RAMSAY

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