THE

# LEGAL NEWS.

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## *CURRENT TOPICS AND CASES.*

There were twenty new cases on the November appeal list at Montreal, besides twenty-two which had already appeared on the September list and had been continued to the November term. Ten were cases from the country districts. This list did not furnish much work for the court. The thirty-eighth case was reached on the first day of the term, and after the roll had been repeatedly called over the court was able to adjourn on the 20th, having sat only four days and a half, and heard sixteen cases. The doing away with the appeal from judgments of the Court of Review in cases under $200 has had a marked effect in diminishing the roll. Not less important, probably, will be the effect of passing over the Court of Appeal by going to the Court of Review, and thence directly to the Supreme Court or Privy Council, in important cases where the judgment is confirmed by the Court of Review. For instance, cases like *Canada Revue* v. *Fabre*, which would probably have occupied the Court of Appeal for several days, are now taken to review instead of to appeal, and if the judgment be confirmed in review there is no appeal except to the

Supreme Court or Privy Council. While this lightens the labor it will hardly add to the *prestige* of our highest provincial court.

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That a conviction was obtained against Haynes for arson is a cause for satisfaction. Seldom has a more amazing tale been unfolded in a court of justice than the deliberate plot, planned with such infamy and carried out with so much boldness, to destroy a building in the business quarter of the city. A sentence of ten years' imprisonment against Haynes can hardly be considered severe when the danger to life from large fires and the numerous accidents which happen to firemen thereat are taken into account. It is to be regretted that only one should be punished where four were guilty, but the difficulties in the way of a successful prosecution for arson are serious.

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Mr. Justice Loranger has obtained leave of absence, and proposes to pass the winter in the south of France. The learned judge for twelve or thirteen years has attended to his duties with the greatest assiduity, and this is the first time that he has applied for leave of absence. The bar will be glad that he should have a period of rest, though they regret that the cause of his having to seek it should be impaired health, and they will hope that the respite from labor will enable the learned judge, on his return to this country, to resume the duties of office with restored energy.

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## *SUPREME COURT OF CANADA.*

OTTAWA, 26 June, 1895.

BELANGER v. BELANGER.

Quebec.]

*Contract—Proprietor of newspaper—Engagement of editor—Dismissal—Breach of contract.*

A. B. and C. B., who had published a newspaper as partners or joint owners, entered into a new agreement by which A. B.

assumed payment of all the debts of the business, and became from that time sole proprietor of the paper, binding himself to continue its publication, and, in case he wished to sell out, to give C. B. the preference. The agreement also provided that:

"3. Le dit Louis Charles Bélanger devient, à partir de ce jour, directeur et rédacteur du dit journal, son nom devant paraître comme directeur en tête du dit journal, et pour ses services et son influence comme tel, le dit Louis Arthur Bélanger lui alloue $400 par année, tant par impressions, annonces, etc., qu'en argent jusqu'au montant de cette somme, et le dit Louis Arthur Bélanger ne pourra mettre fin à cet engagement sans le consentement du dit Louis Charles Bélanger."

The paper was published for some time under this agreement as a supporter of the Liberal party, when C. B., without instructions from or permission of A. B., wrote editorial articles violently opposing the candidate of that party at an election, and was dismissed from his position on the paper. He then brought an action against A. B., to have it declared that he was "rédacteur et directeur" of the newspaper, and claiming damages.

*Held*, reversing the decision of the Court of Queen's Bench, that C. B. was rightly dismissed; that by the agreement he became the employee of A. B., the owner of the paper; and that he had no right to change the political complexion of the paper without the owner's consent.

Appeal allowed with costs.

*White, Q. C.*, for the appellant.
*Brown, Q. C.*, for the respondent.

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6 May, 1895.

MURPHY v. BURY.

Quebec.]

*Signification of transfer, necessary condition precedent to vest right of action—Partnership transaction in real estate—Act of resiliation, Effect of.*

The signification of a transfer or sale of a debt or right of action is a condition precedent absolutely required to vest the transferee or purchaser with the full right of action against the debtor, and the necessity of such signification is not removed by proof of knowledge by the debtor of the transfer or sale.

The want of such signification is put in issue by a *défense au fond en fait.*

M. and B. entered into a speculation together in the purchase of a property known as the H. property. The title to the property was taken in the name of B. and the first instalment of the purchase money was acquired from one P. A. M., brother of M., to whom B. gave an obligation therefor. B. then transferred to M. a half interest in the property. As the remaining instalments of purchase money fell due, suits were taken by the vendor against B. As fast as these demands assumed the form of judgments, M. advanced the requisite amount and took a transfer of them, as he did also of P. A. M.'s obligation against B., but without any signification in either case. Subsequently, by a formal act of resiliation, B. and M. annulled the transfer of the half interest in the property made by B. to M., and formally relieved M. of all further obligation as proprietor *par indivis* for further advances toward the balance due the vendor, and threw the burden of providing it entirely upon B.

*Held*, affirming the judgment of the Court of Queen's Bench for Lower Canada (appeal side), that the act of resiliation and the replacement of the title which it effected into the name of B., was a virtual abandonment on the part of M. of all previous investments made by him in the property or in the claims of others against that property, of which he might have taken transfers.

Appeal dismissed with costs.

*Béique, Q. C.*, and *Monk, Q. C.*, for appellant.

*Barnard, Q. C.*, for respondent.

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26 June, 1895.

ARCHIBALD v. DELISLE.

BAKER v. DELISLE.

MOAT v. DELISLE.

Quebec.]

*Costs, Appeal for, when it lies—Action in warranty—Proceedings taken by warrantee before judgment in principal demand—Joint speculation—Partnership or ownership par indivis.*

Though an appeal will not lie in respect of costs only, yet where there has been a mistake upon some matter of law, or of principle which the party appealing has an actual interest in having reviewed, and which governs or affects the costs, the party prejudiced is entitled to have the benefit of correction by appeal.

It is only as regards the principal action that the action in warranty is an incidental demand. Between the warrantee and the warrantor it is a principal action, and may be brought after judgment in the principal action, and the defendant in warranty has no interest to object to the manner in which he is called in, where no question of jurisdiction arises and he suffers no prejudice thereby.

But if a warrantee elect to take proceedings against his warrantors before he has himself been condemned, he does so at his own risk, and if an unfounded action has been taken against the warrantee, and the warrantee does not get the costs of the action in warranty included in the judgment of dismissal of the action against the principal plaintiff, he must bear the consequences.

W. and D. entered into a joint speculation in the purchase of real estate; each looked after his individual interests in the operations resulting from this co-partnership; no power of attorney or authority was given to enable one to act for the other, and they do not consider that any such authority existed by virtue of the relations between them; all conveyances required to carry out sales were executed by each for his undivided interest. Upon the death of W. and D. the business was continued by their representatives on the same footing, and the representatives of W. subsequently sold their interest to T. W., who purchased on behalf of and to protect some of the legatees of W., without any change being made in the manner of conducting the business. A bookkeeper was employed to keep the books required for the various interests, with instructions to pay the moneys received at the office of the co-proprietors into a bank, whence they were drawn upon cheques bearing the joint signatures of the parties interested, and the profits were divided equally between the representatives of the parties interested, some in cash, but generally by cheques drawn in a similar way. M. N. D., who looked after the business for the representatives of D., paid diligent attention to the interests confided to him, and received their share of such profits, but J. C. B., who acted in the W. interest, so negligently looked after the business, as to enable the bookkeeper to embezzle moneys which represented part of the share of the profits coming to the representatives of W. In an action brought by the representatives of W., to make the representatives of D. bear a share of such losses,

*Held*, affirming the judgment of the Superior Court and of the

Superior Court sitting in review, that the facts did not establish a partnership between the parties, but a mere ownership *par indivis*, and that the representatives of D. were not liable to make good any part of the loss, having by proper vigilance and prudence obtained only the share which belonged to them.

Even if a partnership existed there would be none in the moneys paid over to the parties after a division made.

*Geoffrion, Q.C., and Abbott, Q. C.*, for the appellants.

*Béique, Q.C., and Lafleur* for the respondent.

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26 June, 1895.

DONOHOE v. HULL.

N. W. Territories.]

*Husband and wife—Purchase of land by wife—Re-sale—Garnishment of purchase money on—Debt of husband—Practice—Statute of Elizabeth—Hindering or delaying creditors.*

D., having entered into an agreement to purchase land, had the conveyance made to his wife, who paid the purchase money, and obtained a certificate of ownership from the registrar of deeds, D. having transferred to her all his interest by deed. She sold the land to M. and executed a transfer acknowledging payment of the purchase money, which transfer in some way came into the possession of M's solicitors, who had it registered and a new certificate of title issued in favor of M., though the purchase money was not, in fact, paid. M's solicitors were also solicitors of certain judgment creditors of D., and judgment having been obtained on their debts, the purchase money of said transfer was attached in the hands of M., and an issue was directed as between the judgment creditors and the wife of D. to determine the title to the money under the garnishee order, and the money was, by consent, paid into court. The judgment creditors claimed the money on the ground that the transfer of the land to D.'s wife was voluntary and void under the statute of Elizabeth, and that she therefore held the land and was entitled to the purchase money on the re-sale, as trustee for D.

*Held*, reversing the decision of the Supreme Court of the North West Territories, that the garnishee proceedings were not properly taken; that the purchase money was to have been paid by M. on delivery of the deed of transfer, and the vendor never undertook to treat him as a debtor; that if there was a debt it

was not one which D., the judgment debtor as against whom the garnishee proceedings were taken, could maintain action on in his own right and for his own exclusive benefit; and that D.'s wife was not precluded, by having assented to the issue and to the money being paid into court, from claiming that it could not be attached in these proceedings.

*Held*, also, that under the evidence given in the case, the original transfer to the wife of D. was *bona fide;* that she paid for the land with her own money and bought it for own use; and that if it was not *bona fide* the Supreme Court of the Territories, though exercising the functions and possessing the powers formerly exercised and possessed by courts of equity, could not, in these statutory proceedings, grant the relief that could have been obtained in a suit in equity.

Appeal allowed with costs.

*Armour, Q.C.*, for the appellant.
*Gibbons, Q.C.*, for the respondents.

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26 June, 1895.

TORONTO R'Y CO. v. THE QUEEN.

Exchequer Court.]

*Customs duties—Exemption from duty—Steel rails—For use on railway tracks—Rails for street railway—Customs Tariff Act*, 50 *and* 51 *Vic., c.* 39, *item* 173.

By item 173 of the Customs Tariff Act, (50 & 51 Vic. c. 39 (D), steel rails weighing not less than twenty-five pounds per lineal yard, for use on railway tracks, are exempt from duty.

*Held*, affirming the decision of the Exchequer Court (4 Ex. C. R. 262), Strong, C. J., and King, J., dissenting, that this exemption does not apply to rails for use on street railway tracks.

Appeal dismissed with costs.

*Robinson, Q.C., & Osler, Q.C.*, for the appellants.
*Newcombe, Q.C.*, Deputy Minister of Justice, & *Hodgins*, for the respondent.

## *MR. JUSTICE WHITE.*

On the 20th November, at Sherbrooke, Mr. Justice White, having been sworn in as a Justice of the Superior Court, took his seat upon the bench, accompanied by his predecessor, Mr. Justice Brooks, when he was presented with the following address by Mr. H. W. Mulvena, *bâtonnier* of the district of St. Francis :—

To the Hon. Mr. Justice White :

HONORED AND DEAR SIR,—It is my privilege, as *bâtonnier* of the district, in response to the unanimously expressed desire of my *confrères*, to present to you an address of congratulation on the occasion of your assuming judicial functions, as presiding Judge of the Superior Court for the district of St. Francis. The occasion is one which gives rise to mingled feelings of regret and of pleasure. Time has brought about many changes in the *personnel* of our bar within a comparatively short period, and we cannot repress a regret that now, by your retirement from practice, the profession has lost one of its most distinguished leaders.

The general good will, kindly disposition, and the helpful sympathy which you have always manifested towards your associates, have rendered their relations with you, during your long and successful career at the Bar, both pleasant and profitable to them in a high degree, and we feel that the fair name, which it has been the good fortune of our Bar to possess, has been due, in no small measure, to the high ideal of the profession which you have always maintained and exemplified. The feeling of regret that our former relations have been altered is, however, accompanied with the pleasant assurance, that these relations will not be entirely severed, but only changed in character, and we have the satisfaction of believing, that those qualities and abilities which have made your career at the Bar so successful will, in the higher sphere to which you have been called, render your administration of justice alike agreeable to the Bar and acceptable to the public.

Since the formation of this judicial district, the honorable position which you now hold has been uniformly filled by eminent and gifted men, and it cannot fail to be a source of gratification to you that your appointment was, immediately, and without question, recognized by the profession, and by the "laity" in all

quarters, both within the district and beyond its confines, as, in all respects, eminently fitting and appropriate.

We trust that the onerous duties of the Bench will prove agreeable to you, and that the responsibilities which have been placed upon you will not unduly tax your strength. We beg to assure you that it will be the aim of the members of the Bar, in so far as it lies in their power, to make your labors as little burdensome as possible, and we sincerely hope that you will be spared for many years in health and strength to enjoy the honors which have been so deservedly bestowed upon you.

Mr. Justice White responded as follows :—

"It is very gratifying to be thus welcomed by you, my old colleagues, amongst whom I have passed the best 27 years of my manhood. My professional brethren, with whom I have been so long and so intimately associated, and to whom I have been bound by the close tie of friendly and fraternal companionship, to your address my heart responds with the liveliest emotions of pride and gratitude, pride because you tell me in the sphere of action, where we were side by side, I discharged my obligations as a man and a brother to your satisfaction and won your esteem and regard ; gratitude, because that, looking to the future, you entertain the hope that our altered relationship will bring no interruption to the continuance of the friendly feelings which have always subsisted between us. I would be callous and insensible, indeed, if the expression of such sentiments and hopes coming from you, who have been the best witnesses of my daily life, did not touch me deeply. There is no language at my command adequate to convey to you my heart-felt appreciation of your consideration and kindness. Be assured that the manner in which you have received and endorsed my appointment to this judicial office will not only be an encouragement in the great work which has been placed upon me, but will also be an incentive, if any such were needed, to its diligent and faithful performance. In that work, I am happy to have you proffer the valuable assistance which it is in your power to bestow. Of course, I can only expect it in such measure as is consistent with the discharge of your own duties to your clients. More, I do not ask, nor have any right to expect. The zealous preparation, however, of all cases and applications before they are brought before the court, such, indeed, as you have always

heretofore given, careful and thorough as to facts, and replete with critical research of law and authority, is at once the best assistance you can offer to the Bench, and, at the same time, is the truest devotion to the interests committed to your charge. As to my own duties, it was Socrates who said: "Four things belong to a judge; to hear courteously, to answer wisely, to consider soberly, and to decide impartially." To the attainment and practice of these qualities, I will strive to bend the best energies I possess. My task is all the greater from the fact, to which you have alluded, that all my predecessors have been men of high attainments and of distinguished ability. That I will fall far short of many of the high expectations you have formed may, indeed, be probable, but I will fain hope and trust never to forfeit your confidence in the integrity of my motives, or your respect for the earnestness of my endeavors. Gentlemen, accept my grateful thanks for your address. It will ever be preserved and cherished as a sacred memento of our past intercourse.

Gentlemen, I have to thank our honorable friend, Mr. Justice Brooks, for his compliance with my request to be with us this morning. I knew it would be a gratification to you, as it is to me, to have his Honor introduce his successor to the seat so long and ably occupied by him. We will now permit his Honor to retire, and the sitting of the court will be immediately resumed, for the reception of motions and the transaction of any other business, which may be on the roll, ready for hearing."

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## *CODIFICATION OF PRIVATE INTERNATIONAL LAW.*

Two conferences of official delegates of the principal States of Europe, with the exception of Great Britain, says the *London Law Journal*, were held at the Hague, on the invitation of the Dutch Government, to adopt rules for the codification, by means of an international treaty, of the chief topics of private international law. These conferences were held, the first between September 12 and 27, 1893, and the second from June 25 to July 13, 1894.

The rules adopted by a unanimous vote of the congress constitute an important step towards the realization of the object pursued for many years by Mancini, founder of the Italian School of International Law. They deserve special notice in England, where the current Austinian theory denies that there is any real connection between private international law and the law of nations. Regulated by a general international treaty, the validity of the connection can hardly be denied, and the description of private international law as being neither private nor international—given by one English writer, followed by the statement of

another—that when the system is law it is not international, and when it is international it is not law, cannot in the future have even a show of plausibility.

As the conclusions of this important congress have not hitherto been published in England, we think it better to give the substance of the final protocol, adopted in July, 1894.

FINAL PROTOCOL OF THE CONFERENCE OF THE HAGUE, JUNE AND JULY, 1894.

The undersigned delegates of the Governments of Germany, Austria, Hungary, Belgium, Denmark, Spain, France, Italy, Luxemburg, Holland, Portugal, Roumania, Russia, Sweden, Norway, and Switzerland, assembled at the Hague on June 25, 1894, on the invitation of the Government of Holland, to continue the deliberations commenced in the month of September, 1893, with the object of arriving at an understanding on various points of private international law.

As a result of the discussions recorded in the minutes of the sittings, and subject to the reservations therein contained, they have agreed to submit for the consideration of their respective Governments the following rules:—

I. REGULATIONS CONCERNING MARRIAGE.

(Reporter: M. Renault, Delegate of the French Government.)

*A. Conditions of a Valid Marriage.*

Art. 1. The right to contract a marriage is regulated by the law of the nationality of each of the two contracting parties, unless such law be at variance with the law of the domicile or the law of the place of celebration. Subject to that reservation, in order that a marriage may be celebrated in a country other than that of the contracting parties or of one of them, it is necessary that the contracting parties should fulfil the conditions prescribed by their national law.

Art. 2. The law of the place of celebration may forbid any marriage of foreigners contrary to its rules concerning (1) the necessity of dissolving a previous marriage; (2) degrees of relationship or affinity by marriage, where there is an absolute prohibition; and (3) the consequences of an absolute prohibition of the marriage of a divorced person guilty of adultery.

Art. 3. Foreigners, in order to contract a marriage, must prove that the conditions prescribed by their national law are fulfilled. roof may be given by means of the certificate of a consul or diplomatic agent, or other competent authorities of their country, or by any other means decreed sufficient by the local authority, which, in the absence of international stipulation to the contrary, is left full power of judging on the sufficiency of the proof in both cases.

Art. 4. A marriage celebrated in accordance with the forms of the country where it takes place is recognized everywhere as valid in form. Countries which require a religious ceremony are not obliged to recognize the marriage abroad of subjects celebrated without such ceremony. National

laws as to publication of notice of intention to marry are also to be respected. An official copy of the marriage certificate must be sent to the authorities of the country to which the contracting parties belong.

Art. 5. Marriages duly celebrated before a diplomatic or consular agent are recognized everywhere, if both parties belong to the State of the consulate or legation, and local legislation does not forbid such marriages.

*B. Effects of Marriage on the Legal Status of the Wife and Children.*

Art. 1. The effects of marriage on the legal status and the capacity of the wife, as well as on the status of their children who have been born prior to the marriage, are determined by the law of the country to which the husband belonged when the marriage was contracted.

Art. 2. The rights and the duties of the husband towards the wife and of the wife towards the husband are determined by the law of the nationality of the husband. Nevertheless, they can only be enforced by such means as are sanctioned not only by that law but by the law of the country where the enforcement is demanded.

Art. 3. In case the husband alone should change his nationality, the relations of the husband and wife remain subject to the law of their last common nationality. But the status of the children born since the husband's change of nationality is determined by the new national law of the father.

*C. Divorce and Judicial Separation.*

Art. 1. Married persons are not permitted to claim divorce unless the law of their nationality, as well as the law of the place where the claim is made, permits such claim.

Art. 2. Divorce cannot be claimed unless on grounds admissible both by the national law of the husband and wife and by the law of the place where the action is instituted. In case of divergence between the national law of the parties and that of the country where the action is instituted, divorce cannot be granted.

Art. 3. Judicial separation may be claimed:—

(1) If the national law of the parties and the law of the place where the action is instituted both permit judicial separation.

(2) If the national law of the parties only allows divorce and the law of the place where the action is instituted only permits judicial separation.

Art. 4. A claim for divorce or for judicial separation can be made:—

(1) Before the competent tribunal of the place where the parties are domiciled. If, by their national law, the parties have not the same domicile, the competent tribunal is that of the domicile of the defendant. At the same time, the enforcement of any national law which has established for religious marriages a special jurisdiction in divorce and judicial separation is to be maintained.

(2) Before the competent jurisdiction established by the national law of the parties.

Art. 6. If the parties have not the same nationality, the last law to which both were subject is to be deemed their national law.

II. Regulations concerning Guardianship.

(Reporter: M. le Comte de Villers, Delegate of the Government of Luxemburg.)

Art. 1. The guardianship of a minor is regulated by the law of his nationality.

Art. 2. If, under the local law, there is not in the State under whose control the minor happens to be an authority competent to establish a guardianship, the diplomatic or consular agent of the State residing in the district where the guardianship has become necessary (*où la tutelle est ouverte de fait*) will exercise, if the law of the minor's nationality will permit it, all the powers conferred by that law on the authorities of the State under whose control the minor happens to be.

Art. 3. Nevertheless, the guardianship of a minor residing in a foreign country may be constituted by the competent authorities of the locality and regulated by their law in the following cases:

(*a*) If for any reasons arising from the nature of the case or the law of the locality, the guardianship cannot be created in conformity with Arts. 1 and 2.

(*b*) If the persons whose duty it would be under the preceding articles to create the guardianship have failed to do so.

(*c*) If the person duly authorized by the national law of the minor has nominated a guardian residing in the same country as the minor.

Art. 4. In the cases provided for by Arts. 3 (*a*) and (*b*), the authorities of the minor's nationality may always provide for the appointing of a guardian, if the grounds which at first had prevented their action have disappeared. In that case they should give due notice to the foreign authorities who may have established a guardianship.

Art. 5 In every case guardianship begins and ends at the periods and for the causes determined by the national law of the minor.

Art. 6. Pending the definite appointment of a guardian to a foreign minor or the intervention of diplomatic or consular agents, measures necessary for the minor's protection or the preservation of his property shall be taken by the local authorities.

Art. 7. The guardian's administration extends to the person of the minor and to the whole of his property, wherever the latter may be situated. This rule is subject to an exception, in case of immovables, if the law of the country of their situation prescribes with reference to them any special method of administration.

Art. 8. Any government which is informed of the presence in its territory of a foreign minor, for the guardianship of whom it is necessary to provide, will inform the government of the minor's country in the shortest possible time.

III. Regulations concerning Civil Procedure.

(Reporter: M. Von Seckendorf, Delegate of the German Government.)

*A. Notice Abroad of Legal Documents or Acts, Judicial or Non-Judicial ('Actes Judiciaires ou Extra-Judiciaires.')*

Art. 1. In civil and commercial causes, notices of legal documents or

acts to be made abroad shall be carried out on the request of the officials of the Ministry of Justice, or of the Courts of Law, addressed to the competent authority of the foreign State. The transmission of such notice shall be made through the diplomatic service (*par la voie diplomatique*), if direct communication between the judicial officials of both States is not allowed by local legislation.

Art. 2. The notice will be delivered to its destination by the authority of the State on which the requisition is made. The requisition cannot be refused, unless the State on whose territory the notice should be made judges it of a kind which would injuriously affect its sovereignty or its safety.

Art. 3. To prove the service of notice will suffice, a receipt, dated and attested, or an attestation of the service by the authority on whom the requisition is made, certifying to the fact of service and to the date of the notice. The receipt or the attestation is to be transcribed on one of the duplicates of the legal document, of which notice is to be given, or may be annexed to the duplicate to be transmitted for that purpose.

Art. 4. The regulations of the preceding articles do not interfere with:

(1) The right to address directly through the post legal documents to persons concerned in the cause who are in a foreign country.

(2) The right of persons concerned to cause notice to be served by legal officials or other competent authority in the country to which it is sent.

(3) The right of every State to cause to be delivered through its diplomatic or consular agents notice to its subjects in a foreign country.

In each of the foregoing cases the right does not exist unless the laws of the States concerned or conventions concluded between such States permit its exercise.

*B. Rogatory Commissions.*

Art. 1. In civil or commercial causes the judicial authority of any State may, subject to the regulations of its law, apply by rogatory commission to the competent authority of any other State to obtain its carrying out either a step or preliminary investigation or any other judicial process.

Art. 2. The forwarding of rogatory commissions will take place through the diplomatic service if direct communication between the judicial authorities is not permitted by the law of both States. If the rogatory commission is not drawn up in the language of the State on which the requisition is made, it should, subject to any agreement to the contrary, be accompanied by a translation made in a language agreed upon between the two States concerned, and certified as such.

Art. 3. The judicial authority to which the rogatory commission is addressed is obliged to comply with its terms provided it is satisfied

(1) That the document is authentic. (2) That the execution of the rogatory comission is within the scope of its jurisdiction.

Furthermore, the execution may be refused if the State on which the

requisition is made considers that the execution of the commission would injuriously affect its sovereignty or security.

Art. 4. In case the judicial authority to which the commission is addressed should be without jurisdiction, the commission is to be forwarded, without further request, to the competent authority of the same State.

Art. 5. In every case in which a rogatory commission is not executed by the authority on which the requisition is made, the latter will immediately inform the authority which has made the requisition, stating, in the case provided for by Art. 3, the reasons for which execution is refused, and, in the case provided for by Art. 4, the authority to which the commission is transmitted.

Art. 6. The judicial authority which proceeds to execute a rogatory commission will apply the laws of its own State in so far as concerns the forms to be followed.

Nevertheless, any request of the authority making the requisition will be complied with, although it require the adoption of a special procedure, not regulated by the legislation of the State on which the requisition is made, provided that such method of procedure be not prohibited by the law of that State.

*C. 'Cautio Judicatum Solvi.'*

(Reporter: M. E. Roguin, Delegate of the Swiss Government.)

Art. 1. No security or deposit, under whatever title, can be required on account of their being foreigners or on account of want of domicile or of residence in the country from the subjects of any of the States parties to this convention who may become plaintiffs or interveners in any case before the tribunals of any of these States.

Art. 2. Judgments for expenses and costs of process rendered in any one of the States contracting against a plaintiff or intervener who, under Art. 1 or by local law, has been exempted from furnishing security or deposit shall be declared enforceable (*rendues exécutoires*), in the territory of each of the other States parties hereto by the authority which under local law is competent.

Art. 3. The competent authority is restricted to inquiring

(1) Whether, in accordance with the law of the country where the judgment has been pronounced, the rendering of the decision is attended by those conditions which are necessary to its authenticity,

(2) Whether, in accordance with the same law, the judgment has acquired the force of *res judicata.*

*D. Legal Assistance* (*'Assistance Judiciaire.'*)

Art. 1. The subjects of each of the States parties hereto shall be admitted in all the other States to the benefit of the system of legal assistance, in the same manner as the subjects of each State, on complying with the provisions of the law of the State wherein such assistance is claimed.

Art. 2. In all these cases a certificate or declaration of poverty must be delivered to or received by the authorities of the place of usual residence

of the foreigner, or, in default of such, the authorities of the place of his actual residence. If the claimant does not reside in the country where the claim is made, such certificate or declaration of indigence is to be attested free of charge by a diplomatic or consular agent of the country wherein the document is to be produced.

Art. 3. The authority, (which is competent to deliver the certificate or receive the declaration of poverty) may obtain information as to the means of the claimant from the authorities of the other States parties hereto. The authority whose duty it is to decide on claims for legal assistance retains, within the limits of its jurisdiction, the right of controlling the form and substance of the certificates, declarations, and information to be furnished.

Art. 4. No security or deposit, under whatever title, can be required on account of their being foreigners, or on account of want of domicile or residence in the country, from foreigners who have been granted legal assistance.

Art. 5. Every judgment for expenses and costs of process rendered in any one of the States contracting against a foreigner to whom legal assistance has been granted, and who, under the preceding article or under local law, has been exempted from furnishing security or deposit, shall be declared enforceable in the territory of each of the other States parties hereto by the authority which under local law is competent.

Art 6. The competent authority is restricted to inquiring:

(1) Whether, in accordance with the law of the country in which the judgment has been pronounced, the rendering of the decision is attended by those conditions which are necessary to its authenticity.

(2) Whether, in accordance with the same law, the judgment has acquired the force of *res judicata*.

[To be concluded in next issue.]

## *GENERAL NOTES.*

CORPORAL PUNISHMENT.—A return has just been issued as a Parliamentary paper of all sentences of corporal punishment inflicted under 26 and 27 Vict., c. 44, upon persons convicted of offences against section 43 of the Larceny Act, 1861, and section 21 of the Offences against the Person Act, 1861, in England and Wales, from February 27, 1894. The return is dated September 2, 1895. It states that the offences for which corporal punishment was inflicted were: Robbery or assaults with intent to rob with violence, 38; by person in company, 31; total, 69. In two cases the punishment was ordered to be inflicted with a birch rod; in the other sixty-seven cases the instrument used was the 'cat.' Fifty offenders were ordered to be whipped once, and nineteen twice. The largest number of strokes ordered was thirty, the smallest number ten.