The Virginia Law Journal, Richmond, Va., January, 1881.

Is the Mere Possession of a Bond or Note not payable to Bearer and unindorsed by the Payee or Obligee sufficient, without Evidence of an Assignment, to entitle the Holder to enforce Payment of it? by R. T. Barton, cites American cases with reference to some recent decisions of the Court of Appeals of Virginia upon this subject.

CORRESPONDENCE.

The Berne Conference of the Association for the Reform and Codification of the Law of Nations.

NOT the least pleasant part of a vacation spent abroad to an American lawyer is the opportunity which every summer now presents of attending some of the conferences of an international character, held at one or another of the European capitals, for the discussion of questions of jurisprudence or political science.

In 1873, two of these conferences assumed a permanent shape, one under the style of the "Institute of International Law," composed of a few professed jurists; and the other under the unwieldy name which heads this article, with larger numbers, open practically to all who are interested in its general purposes, whether from the stand-point of law, politics, or trade. Both of these organizations have maintained annual meetings ever since, and have accomplished some valuable work. In 1877, for instance, at the Antwerp conference of the Association, a set of twelve rules was framed, to establish a uniform international law of general average. These have met with very general acceptance among shippers and underwriters, both in Europe and America, and, by the name of the "York-Antwerp Rules," have been formally adopted by a large number of chambers of commerce and other commercial organizations.

The head-quarters of the Association for the Reform and Codification of the Law of Nations has been fixed at London, where they have a pleasant office in Chancery Lane, and their proceedings are published in English; but their meetings have been held at different places on the continent from year to year, and much of their committee work has been done in Germany.

In August, 1880, the eighth annual meeting of this association was held at Berne, in the Federal Council Hall of Switzerland. From fifty to seventy-five members were present, including five from the United States. The President of the Swiss Confederation opened the proceedings by an address of welcome, in which he alluded very happily to the interest of his countrymen in all that tended to put international law on a more certain footing, bound together as they were by a federal compact, and with their mountain barriers now pierced by tunnels, constructed by distant nations for the use of Europe.

The first subject for discussion was that of the proper limits of consular jurisdiction in the East. Sir Travers Twiss read the introductory paper, in which he emphasized the fact that the administration of justice by a foreign consul be-

tween his own countrymen ought not to be regarded as an invasion of the sovereignty of the nation to which he is accredited, since it belonged to that general system of personal laws, under which all Europe was governed for so many centuries. "Territoriality," to use his own words, "as the basis and limit of community of law, is a theory of comparatively modern date, as compared with nationality or the principle of race. The *lex territorii* is but the *lex loci* written large."

So far as Turkey was concerned, there was now, he thought, little reason to complain of her system of laws. They were closely copied from the *Code Napoléon*, and Christians and Mussulmans were placed on an equal footing before the courts. But no law could force a judge to give the same weight to the testimony of different men; and in practice the Turkish Kadi, while he admitted the testimony of a Christian, never believed it. The law was also buried in a Turkish text, the only translation being in Greek.

The Treaty of Berlin, of July, 1878, contained provisions looking to the relinquishment of consular jurisdiction in Servia, by the other contracting Powers, whenever they should be satisfied that it was no longer necessary for the protection of their subjects; and early in 1880 Great Britain had formally surrendered it, both as to Servia and Roumania.

Mr. Trige, an *attaché* of the Japanese legation at London, followed with an earnest protest against the maintenance of consular courts, with their present amplitude of jurisdiction, in his country, in view of the great social changes by which her institutions had now become so nearly assimilated to those of Europe; and several of the members expressed their appreciation of the advances both in law and legal education made by Japan, and their conviction that the day was not distant when Western nations might safely trust their subjects to the protection of her tribunals.

The law of negotiable securities was then brought up, by a report from the German branch of the association. In May, 1880, the council of this branch issued from Bremen a circular letter to the chambers of commerce and stock-exchange committees of the principal cities of Europe, proposing for their consideration six rules as to the issue, transfer, and satisfaction of all forms of negotiable securities. Among the points suggested were, that all bonds payable to bearer should be registered in some public office, prior to their issue, and their satisfaction entered on the same record; that a certain period of prescription should be fixed, after which the owner of a lost or stolen bond could compel its payment, unless it had previously come into the hands of a *bona fide* holder; and that, upon due proof of the destruction of any negotiable security, the courts may require the issue of a duplicate. The replies received to this circular had occasioned considerable modifications in the proposed rules, which had been redrafted during the summer, but were still not in a state to be submitted for final action. It was evident to the English and American members that they were much better adapted to those countries where almost all commercial contracts are reduced to writing and put in formal shape through the intervention of notaries or other public officers, and the people are familiar with a system of recording hypothecations and liens as to personal property, than to those where merchants have been allowed to develop their own customary law. Mr. R. Bithell,

of the London house of Messrs. Rothschild & Sons, objected strongly to any resort to a public register in transferring a bond. "What we call bonds, in the city," he wrote, "are really copies of bonds, and the original bond is rarely seen, unless specially applied for. This original bond might be registered with advantage, as proposed in the resolutions, but the copies, which are what, in banking parlance, are called securities, are bought, sold, pawned, deposited as guarantee, without any record, except as between the two parties immediately concerned; and anything which tended to fetter the movement of such securities would, I am sure, be very unwelcome to business folk."

The Institute of International Law, at its Brussels meeting, in 1879, took up the subject of the protection of submarine telegraphic cables, upon a report from Professor Renault, of the School of Political Sciences at Paris, and finally adopted two resolutions, as follows: —

"I. Il serait très utile que les divers États s'entendissent pour déclarer que la destruction ou la détérioration des câbles sous-marins en pleine mer est un délit du droit des gens, et pour déterminer, d'une manière précise, le caractère délictieux des faits et les peines applicables: sur ce dernier point, on atteindrait le degré d'uniformité compatible avec la diversité des législations criminelles.

"Le droit de saisir les individus coupables, ou présumés tels, pourrait être donné aux navires d'État de toutes les nations, dans les conditions réglées par les traités; mais le droit de les juger devrait être réservé aux tribunaux du navire capturé.

"II. Le câble télégraphique sous-marin, qui unit deux territoires neutres, est inviolable.

"Il est à désirer, quand les communications télégraphiques doivent cesser par suite de l'état de guerre, qu'on se borne aux mesures strictement nécessaires pour empêcher l'usage du câble, et qu'il soit mis fin à ces mesures, ou que l'on en répare les conséquences, aussitôt que le permettra la cessation des hostilités."

Sir Travers Twiss, who is one of the most active members of both organizations, presented these resolutions to the Berne meeting for approval. In the discussion which followed, R. D. Benedict, Esq., of New York, called attention to the inaccuracy with which the second clause of the first resolution was drawn. It assumed that the guilty persons would, in all cases, be arrested on shipboard, and that the ship on which they were would be necessarily liable to capture; since, otherwise, how could they be arrested by a ship of war, and how could the prescribed forum of their trial be ascertained? But it is obvious that they might have left the vessel, on which they were when the cable was cut, long before their arrest, and shipped upon another, perhaps merely as passengers; in which case the nation to which she belonged could hardly recognize a right of search, still less of capture. The association, therefore, declined to concur in the conclusions of the Institute, and the incident furnishes a good illustration of the benefit which each of these societies must, in the nature of things, derive from the existence of the other. It is the bicameral system applied to speculative politics. Sir Travers Twiss, in the paper read in support of the propositions of the Institute, stated that there were now 64,400 nautical miles of submarine cable, of which 60,000 belonged to private companies. He did not object to applying to them the rules under which governments have been accustomed, at times, to open letters or stop the mail, as formulated in the international tele-

graphic convention, signed at St. Petersburg in 1875; that is, that each government may suppress any telegram deemed dangerous to the safety of the State, and may suspend the use of the line, either in whole or part, or simply for certain kinds of messages, provided immediate notice be given to the other contracting powers.

The most interesting debate which took place during the conference was over the report of the committee on International Copyright. This referred to the memorial presented to our Department of State by Hon. John Jay and others, the American committee of the association on the subject, as apparently asking less than foreign authors had a right to demand, and spoke of the decision in the *Trade-Mark Cases*, 100 U. S. 82, as perhaps importing that Congress had no power to legislate at all in this direction. Allusion was also made to the fact that the severe competition of late between our Eastern and Western publishing houses in cheap reprints had caused some sentiment in favor of an international copyright treaty to spring up in the book-trade itself. The report was written from a British stand-point, and was followed by remarks reflecting severely on the standard of morals in the United States, as indicated by our course hitherto, in relation to British authors. One of the American members — a naturalized citizen, and perhaps, therefore, the more zealous in the defence of his country — took fire at this attack, and replied with considerable warmth. Was it, he asked, for England, that "nation of shop-keepers," to take other States to task because their policy was dictated by self-interest? When did England ever act from principle, when money was at stake? Was it when she forced the opium trade upon unwilling China, at the cannon's mouth? Was it when she thrust, as with a ramrod, British institutions and British rule down the throat of India? Let any gentleman present name one single instance in which England had ever acted toward any other people from motives of principle, and he would sit down, and be silent. At the reference to India, a gleam of hearty satisfaction shot across the dusky face of one of his auditors, a delegate from Calcutta; and the Continental members generally, as the speech went on, listened with the closest attention. When it ended, the incautious challenge was promptly accepted by an English barrister, who quietly said that as but a single instance had been asked for, he would name but one, out of many. Had the gentleman from the United States never heard how, under the lead of Wilberforce, Great Britain not only emancipated her slaves in the West Indies, but paid their value to their former owners? Further contest over the comparative morality of the two countries was checked by the interposition of the President, Dr. Sieveking, of Hamburg; and another of the Americans present, Judge Hunt, of the Court of Claims, afterwards poured oil on the troubled waters, by expressing his belief that the growing sentiment in favor of a copyright treaty in the United States, to which the committee had alluded, aided by the long-cherished opinions of many of our best citizens, not connected with the publishing trade, was likely soon to bring the two countries together upon common ground.

Several papers of minor interest were presented during the conference, the most noticeable of which was one from Sir Sherston Baker, on the administration of oaths in Great Britain by foreign consuls. Common as such oaths are, and have always been, it appears that, by an act passed nearly fifty years since (5 & 6

Will. IV. c. 62, § 13), to suppress the taking of voluntary extra-judicial affidavits, no oath can be lawfully administered except pursuant to some statutory authority. None such exists in the case of consuls, and they seem to be left liable to prosecution for a misdemeanor for administering any oath whatever.

The discussions of the conference were mainly conducted in English, and most of the papers and reports were printed and read in the same language, although every member was at liberty to use his own. The business had been largely prepared in London, and nearly half the gentlemen present were from Great Britain or America. This gave more of a provincial tone to the proceedings than might have been anticipated in a body representing so many and widely scattered nationalities, and one or two of the English members seemed to regard it as affording a convenient forum for criticisms upon some of their purely local methods of judicial administration. But every association must have a centre, and perhaps this one could not have selected a better, than the greatest and freest city of Europe.

It cannot be expected that such a meeting as this at Berne will arrive directly at any very valuable results. Its good must be sought in its discussions, rather than its resolutions; in its indirect, not its direct, influences. There were those who thought that the first World's Fair of 1851 would prevent any future wars between nations taking part in it. There are those who see similar possibilities in the work of the two associations of which we have spoken. If they do not fall into the hands of mere *doctrinaires*, or sink under the control of local cliques, they certainly must have an important share in shaping that public sentiment to which governments must bow, in matters of international as well as of municipal law. They can have no motive, except to make the law of the world more certain and more just; and every successful effort in this direction is necessarily a step in the interest of peace. Their best work, however, will probably be accomplished in the field of private international law. They have already done something here of permanent value, and there is every reason to expect more.

SIMEON E. BALDWIN.

NEW HAVEN.

NOTES OF CASES.

STATE COURTS.

ALABAMA.

Husband and Wife. — Change of Domicile. — Where a resident of Illinois abandoned his domicile in that State, and died while in transit to Alabama, but before arrival here, the domicile of the surviving wife is, at the time of his death, in the former State, not the latter. *George D. Minyer, Adm'r*, v. *Amelia Talmadge*. Supreme Court. Special October Term, 1880. — *Southern Law Journal*, Montgomery, Ala., December, 1880.

Bills and Notes. — Antecedent Debt. — (*Head-note.*) — Without express agreement, the giving of a negotiable bill for an antecedent debt does not operate to discharge