After having thus demonstrated the expediency of modifying the text of Art. 1. of the Convention, I ask to be permitted to read the new text of said article, which I had submitted to the examination of the reporting Committee. It reads as follows:

«The inhabitants of each one of the signatory nations of the present convention shall enjoy in all the others the same rights as the nationals, for the purpose of reserving to themselves the property of the trade marks of commerce and manufacture, subjecting themselves to the formalities and conditions established by the laws of each one of them.»

This text, if it is not good, even if it is not better than that of the Convention of Montevideo, certainly expresses clearly what without doubt the signers of that convention proposed to say, and, as I have demonstrated before, enunciates and fixes a principle which represents a progress with respect to what legislation had succeeded in establishing up to the date in which that convention was signed.

I must return, although it be only for some brief moments, to support some of the amendments, to which I referred in the discussion of this morning. I suggested the advisability of limiting the right established in Art. 1. of the Convention, in case the trade marks were contrary to morals, or that they had become public property.

His Excellency Mr. Elmore, Chairman of the Committee, stated, that in his opinion that amendment would be useless; that he could not conceive that trade marks could become public property, because in conformity with a principle of the majority of the legislations, the property of a trade mark was perpetual. It will be sufficient to cite a case, in which they are not, and which refers to nations which tomorrow may adhere to this convention, in order to justify the amendment submitted by myself to the consideration of the Conference.

I recollect that Germany and Chili do not establish the perpetual property of trade marks, but that they fix a period of ten years for them, granting the owner the right to renew it. In these countries, in every case, in which the right of the reservation of the property is not renewed, the mark becomes void.

But independent of this case, and without the necessity that those legislations should give a definite duration to trade marks, the abandonment of them or a judicial declaration of nullity, is sufficient, and in such cases, anybody who might solicit the deposit of the mark, would find himself in justice opposed by all those who might have made use of the same in the interval, on the ground that the mark had become public property.

I shall not insist regarding the other exception, that the mark might be contrary to morals. It was a scruple that had induced me to indicate that addition, for the possible case, that the oriental nations might adhere to this convention; but the case is so remote, that it would possibly be better not to insist on that amendment.

With respect to the third one, which refers to the extraterritorial effect of the sentences pronounced by a tribunal on the nullity of trade marks, I really should not discuss this point with His Excellency, because he has adduced no argument whatever against the same: he has limited himself to state that it would hardly be advisable to seek to effect such a result by the convention. I believe, on the contrary, that it is absolutely necessary to give extraterritorial effect to the sentences, because a contrary course would authorize the undue exploitation of marks that are null, when they already lack the support of the legislation of the country in which the right of their property was first recognized. From the moment, in which the country of its origin declares that the property is null, whatever may be the reason that serves as the basis of such nullity, it cannot, it should not be valid in the other nations, above all, when it is a question of trade marks which protect articles of exportation, because it amounts to the same as authorizing speculation and fraud under the protection of a property which already has ceased to exist. If we have to respect the property of an owner of a mark, when he has registered it, we must also respect the temporarily restricted rights of the rest, whenever the mark has ceased to exist for any reason.

Let us bow respectfully before this right, as we do before the first one mentioned; in this manner we will have performed an act of justice.

His Excellency Mr. Elmore.— For the purpose preserving the order of the debate, I will reply to the observations of my honorable colleague Mr. Casasus, when the respective article is under discussion in detail; at this moment I shall limit myself to reply to His Excellency Mr. Bermejo, because his observations refer to the very essence of the question, in as much as if it were not advantageous for the privileges granted in one country to be secured in another, there would be no object in concluding an arrangement of any kind with the different countries in regard to that subject.

A distinction must be made, Sir, between the concession of a privilege to foreigners by a country, in conformity with its domestic provisions on the subject, and the recognition of the right conceded to a foreigner, or to a native, in a foreign country, and which latter is sought to be introduced into a determinate country. There is a great difference between conceding, we will say, in the sense of originating, be it a patent of invention, or be it the right to a trade-mark in a determinate country, and importing to another country the concession that has already been obtained. The local laws of each country may establish and generally they do establish, that concessions made in this order be favorable not only to natives but to aliens as well; but that does not prevent that by treaty it be stipulated that marks granted in one country be recognized when used in another.

It is necessary to keep in mind that it is not a question of natural rights that should be recognized everywhere, that it is not a question of property so called, nor of the respect due to the persons of others, nor of the preservation of our lives; rights that have to be necessarily conceded to man in all parts; the concession of a patent of invention or the exclusive use of a trade mark, are creations purely juridical; thus, it is possible that in certain countries those rights may not be recognized, and the object of the treaties is to prevent that a local legislations should nullify those rights when they have been thus secured in another country. I will cite an example referring to Peru.

The Treaty of Montevideo, accepted by Peru in 1889, established the obligation of recognizing the rights of foreigners in their marks, and notwithstanding, the first general law on trade-marks of Peru

was issued in 1893, thus this right received international guarantee, before having received national guarentee.

On the other hand, to recognize the right to a mark, already registered in foreign parts, would be to recognize the priority of that mark, marking a difference between it and the concession contained in the same country. There is a great difference between the priority that has been obtained and is recognized by an international treaty, and the priority conceded by local laws.

When it is sought to recognize by national law this class of rights, they are generally granted to those who have establishment or residence in that place; because it is natural to suppose that he who has no commercial or industrial establishment in that place, should not recur to the country to ask for the recognition of his right. But when a treaty is celebrated, that right may be granted even to those who have no establishment nor residence in the place; and of this we have an example in the law of Mexico of 1891. According to that law, foreigners could only be granted right to a mark when they had their residence or establishment in the place where their products were sold, excepting where otherwise stipulated in the treaties.

In fact treaties have for object to render it unnecessary for the manufacturer to found an establishment in all the countries wherein he may wish to register his mark. In such manner, a manufacturer may have his mark in one country and cause his right to the mark to be respected in all the others, even when he founds no commercial establishment.

The manufacturer does not need to found an establishment, as was the case with the old law of Mexico, if there were no treaty. For this reason, I think that treatries are of veritable importance and this is so evident, that even the Argentine Republic, which was one of the signatory powers of the Treaty of Montevideo and ratified it, established the right of registering foreign trade-marks, provided there be reciprocity.

I think that this is sufficient to demonstrate that this class of conventions is of veritable utility, and I will reserve my right to reply to the Honorable Mr. Casasus in due time.

His Excellency Mr. Walker Martinez. — In the general discussion, Mr. President, I have only heard one objection founded on principle against the project, and that is the one made this morning by Mr. Bermejo, when recalling a recent law passed in this country, he said, that since in it was conceded the right for natives and foreigners to register their marks, the other Nations have advanced nothing with this treaty under discussion.

The stand taken this morning by Mr. Bermejo, is the one taken by the Delegates of Chili in 1889. When this treaty was discussed in Montevideo, the representatives of Chili found that their country had already issued a law on the matter, that is to say, that fifteen years before, a law had been promulgated of most liberal character in regard to trade-marks, the law of the year 1874, entitled «Law upon Trademarks, National and Foreign,» and which provides in article 1, that a register be opened for the inscribing of national or foreign trade-marks. Thus, despite the fact that there existed in my country this law, liberal to all foreigners, whether they were or were not resident therein, the Delegates of Chili voted for the Convention of Montevideo, solely because he who has private franchises naturally desires those franchises extended to other nations. For this reason I believe that the principal objection made to the project of treaty, founded on the fact that some countries have in their legislation a like law, ought not to be taken into consideration, because there are other countries that do not have it, or, as Mr. Casasus very properly supposes, because that law may easily be abrogated.

But resuming the discussion already somewhat personal, as Messrs. Casasus and Elmore have done when analyzing the project, I will say that there are some questions that, so far as I am concerned, I would be perplexed just how to vote on: I find well founded the reasons adduced by His Fxcellency Mr. Elmore in sustaining article 1 of the Convention of Montevideo, because I believe that in it are guaranteed the rights of the owners of trade-marks; but at the same time I find much sound reasonin the statements of Mr. Casasus. I think that in this case occurs what happens ordinarily when two distinguished jurists differ upon the interpretation of an article of law: that in principle they are in accord in many things, and only in details do they differ, and perhaps from some mere incidental phrase they are unable to arrive at an agreement.

For this reason, Mr. President, seeing that the idea to give to the project the form of a convention is accepted, and that even Mr. Elmore has employed this word for the purpose of uniting these two forces that converge toward the same end, I beg to ask the Conference to approve the project in general, that we may transmit it later to the Committee, in the hope that Mr. Casasús may there express his reasons, and the project be prepared in better phraseology than it now has.

His Excellency Mr. Bermejo.— I observed, Mr. President, in the session of this morning, that my fundamental objection, so far as it concerns the country that I represent in this Conference, was that its provisions in force went even farther than this Convention. In speaking of article 1 of the Convention which establishes that trade-marks granted in a foreign country may be recognized in another by virtue of legislation in force, I stated that this was explicitly provided for in the laws of our country; but I did not deny the appropriateness of examining the point in general, which I simply contested in detail.

Accepting the idea of establishing a convention upon this matter, it has seemed to me that there has been overlooked the actual difficulty that must present itself in questions involving trade-marks, and in order to render my thought clearer, I am going to indicate the text of some laws of other countries, so that we may find a way to save ourselves from this difficulty.

In France, for instance, the law recognizes this property right in the French and in the foreigner resident in that country, that is to say, it places the native and the foreigner on the same footing, exactly as provided in all of our American laws.

But the same French law adds that foreigners and Frenchmen whose business establishments are situated outside of France, shall only enjoy that right under the condition of reciprocity. So, the criterion that the law has in view to determine the acceptance of a mark does not properly consist in the national-

ity of a person, but in the place where the establishment is situated.

The law of Belgium, of April 1, 1879, established that the benefit of the law should be extended to foreigners conducting industrial or commercial establishments. Here, if the law were more restrictive, foreigners would not enjoy equality of conditions with natives, were it not for the sole fact that the establishment is fixed in the place.

The Swiss law adopted a measure analogous to the French, establishing reciprocity.

Italy on her part, issued the law of 1868, which admitted, with the amplitude of ours the principle therein stated.

For these reasons, without ignoring the necessity of studying a project of treaty, it is stated that the base established by the project under discussion, renders it less ample than our laws in force. It is well, then, that the project be accepted in general and that it be modified later, embracing the suggestions made by their Excellencies Messrs. Casasús and Elmore.

His Excellency Mr. Pablo Macedo, Delegate from Mexico.—Sir, I beg a thousand pardons from the Conference, if after the ideas expressed here I take part in this debate; but I must remark that discussion in general is the same as discussion in detail in this case, because the fundamental principle presented to us by the report of the Committee is that we adopt the Treaty of Montevideo. In consequence, the remarks that we make upon the Treaty refer to the fundamental principle of the report, as all the other articles which it recommends to us, refer exclusively to details upon the manner in which this adoption of the principles of the Treaty of Montevideo is to be converted into a diplomatic convention.

I agree with the ideas of my distinguished friend Mr. Walker Martínez, that as soon as the report is approved in general, as a testimonial to the laboriousness and dedication of the Commitee, the latter take into consideration, if it thinks proper, the suggestions here presented.

If the Committee accepts this idea, I will not fatigue the Conference by presenting any considerations; if it is not so, the Committee and the Conference will please pardon me in presenting them. And I would beg the worthy President of the reporting Committee to manifest if he is or is not in accord with the idea expressed by His Excellency Mr. Walker Martínez, and then I will continue to use the floor, if the President permits me.

His Excellency Mr. Elmore.—Mr. President, I have no objection to present against the idea that this matter should return to the Committee, for really some modifications may be made in the drafting.

This morning I stated that the expression right of property is not suited, that it is not strictly juridical, although it may be an expression that is used and acepted. So the foundation that I alleged, is not the one indicated: I do not deny the right that the possessor has in a mark, for this is a perfect right that ought to be respected; I remarked the difference that exists between a right of any kind whatsoever and that of property. The right of property is a real right referring to things material and determinate; the right of obligation is of another kind and this right, with respect to trade-marks, is of a diffrent nature: juridically it is not a right of property, it is a legitimate right, but not of property. Notwithstading, these expressions are already sufficiently admitted in use.

As regards the fundamental part, I have already expressed my opinion, and I have no objection, therefore, to the report being returned to the Commitee. We will see if we can agree with the persons who desire to assist at the sessions of said Committee.

His Excellency the President.—For the purpose of making the corresponding ruling, as just stated by the President of Committee, I beg to ask him to say if he withdraws the report before the vote is taken in general, or if he desires that the vote be taken in general, to withdraw the said report later.

His Excellency Mr. Elmore.—My proposal is to accept the suggestion made by the Honorable Walker Martinez, in that the report be voted on as a whole, and later pass to the Committee, because the suggestions now pending form no obstacle for approval as a whole.

Secretary Duret.—The Committee having manifested that it acepts that the suggestions introduced be reserved for the discussion in detail, the Conference is asked if it approves the report as a whole.

The ballot having been counted, it was found that seventeen of the delegations present were cast in the affirmative.

His Excellency the President.—The report is approved as a whole and is returned to the Committee to be reconsidered.

SESSION OF JANUARY 2, 1902.

Secretary Macedo.—His Excellency the President has been pleased to rule that the report of the Committee on Patents of Inventions, Trade-marks and Weights and Measures be printed and distributed among the Delegates, which report in Amending the previons one, proposes a project of treaty on Patents and Trade-marks of Commerce and Manufacture.

REPORT of the Committee on Patents, Trade-marks and Weights and Measures, proposing as an amendment to its previous report a Project for a Treaty on Patents of Invention, Drawings or Designs, Industrial Models and Trade-marks of commerce and manufacture.

Messrs. Delegates:

The Committee withdrew its report upon Trade-marks after it had been approved as a whole, in order to modify somewhat its wording, and to make it conform as far as necessary, to the observations made in the course of the debate.

For this purpose it has given to the conclusions contained in this report the form of a treaty, and at the same time it has deemed it expedient to pass upon the project referring to patents of invention, contained in the proposition of His Excellency Mr. Cuestas, Delegate from Uruguay, and thus the Convention has drafted a project conjointly regarding trade-marks, industrial drawings, models and patterns.

By joining both projects, we have followed in this the example of the Convention of Paris; it not only offers, the advantage of economizing time, for the reason that they refer to analogous matters, but it also permits the initiation in America of the International Bureau of Industrial Property, which is indispensable for the admission of some of the amendments proposed by His Excellency Mr. Cuestas to the Treaties of Montevideo. And in this

manner certain objections made concerning the project on trade-marks will also disappear, which should not refer to these, but to the patents of invention.

I. Cencerning the persons whose rights it is intended to secure, the Treaties of Montevideo limit themselves to guarantee the importation of trade-marks or patents granted in the other signatory countries; because the national laws are at present sufficiently liberal in recognizing such rights of those foreigners who solicit them, on the same basis as those of their own citizens; and it is not probable that such legislation will retrocede, in view of the progress of civilization and of the protection which is everywhere granted to international commerce.

However, for the purpose of meeting the objections made in the course of the debate, it is now proposed that the citizens of the signatory nations, as well as the foreigners who may have their domicile there, or any industrial or commercial establishment, shall enjoy in the other contracting States the same advantages and protection as are accorded to their own citizens in respect to the patents of invention, of drawings and industrial models and of trade-marks of commerce or manufactures: and such are the stipulations ot the Convention of Paris of the 20th. of March, 1883.

These provisions have not been extended to foreigners without domicile, although some national laws protect them in the same manner as the citizens of the State; because a Convention cannot be adjusted to favor foreigners in transit, and to give them in the other signatory powers the advantages, which the laws of one ot them may grant to said foreigners and which these same laws may revoke at any time whenever the respective nations should see fit to do so. On the other hand, such a stipulation in favor of that class of foreigners would not stimulate the States to which they belong, to grant to the citizens of the other signatory countries equal rights, either by adhering to the corresponding treaty, or by reciprocity granted in a different form.

The right of importing the Patent or the Trade-mark granted in the country of its origin, does not, however, prevent a foreigner from soliciting those rights directly from the signatory country which he may deem convenient, either by taking advantage of the rights granted by the treaty, on account of his domicile or establishment, or by relying, on the local law, if that sbould be more favorable to his interests.

II. The Treaty of Montevideo on patents of invention fixes the term of one year for an imported title to preserve its priority. The treaty on trade-marks, models and drawings does not specify any term for that object, and the Committee proposes that the term for the latter be fixed at six months, because in the case of the latter it does not require such a long period as in the case of the former; thus preserving between one and the other the relation established by the above mentioned Convention of Paris.

III. In the first report of the Committee, the cases in which the importation of trade-marks, shall be permitted, are not determined, as they are equally undetermined by the Treaty of Montevideo; because as this ought to be regulated in acordance with the laws of the country into which they are to be introduced, it is clear that any prohibitory laws of the respective country will have to be respected; but, as in the new project of the Committee it is suggested that an International Bureau be established by which it will be possible to give validity in all the signatory States to trade-marks, models and drawings, as well as to the patents registered in the country of their origin, the opportunity presents itself for preventing, that those which are contrary to morals or to the laws of any country be imported into the same.

Patents of invention and of models and designs of manufacture may become public property, because the industry that has been protected by them may become free, whenever the respective patents become extinguished, as they are equally free when the patents have not been obtained in any country. Such a reason for refusing the granting of patents has therefore been inserted as in the Treaty of Montevideo, but it has not been possible to do so with regard to trade-marks, not because they are perpetual, a quality which no one positively affirms, but because they cannot be freely used by the public; because if they were so used, they would no longer be trade-marks, as the latter are essentially distinctive marks of merchandise or of analogous products, belonging to different merchants or manufactures.

It is quite possible that a mark which has ceased to belong to any special person, may be appropriated by another, and if a third one should claim it, the actual proprietor should oppose such pretension; not because the mark may have passed to the dominion of the public, but because that second person has already acquired a right of priority, as regards that third party.

IV. As the existence of a Patent constitutes a restriction upon the liberty of industry, the adjoining project, in accordance with the Treaty of Montevideo, permits the limitation of the period of a patent right, whenever such period according to the laws of the country of its origin is less than that allowed by the laws of the nation into which it is introduced.

There is no reason for such a provision with regard to trade-marks, since their duration does not constitute any injury to the rights of others; and the same countries which limit them to a fixed period, permit their renovation, at the option of the party interested.

V. It is advisable to establish, as soon as possible, a Continental Bureau of Industrial Property, similar to that of Berne; where patents and trade-marks secured in the country of their origin, may be registered, by which the recognition of the right to the same in the other signatory countries is secured. It will not be easy to realize the establishment and proper working of such Bureau immediately, on account of the great distances between the Republics of America and above all, of the diversity of their laws, which constitute a difficulty for giving to the patents and trade-marks obtained in them an international character.

In order to facilitate the establishment of this new institution, the substance of the industrial laws has been compiled in this report and project, for the purpose that such Bureau may have a wide field of action. Besides it has been deemed prudent to leave the interested parties at liberty, either to effect the importation of their patents or trade-marks into the countries they may choose, acoording to the usual methods, or apply to the International Bureau