whenever it should exist, should they deem it preferable to take advantage of its services.

It is further proposed, in order that such an institution may be founded in an acceptable manner, that its working plan be organized and regulated in a separate protocol, in case the Conference should resolve upon its establishment.

VI. In case the Patent or Trade–mark should become void in the country of its origin, it is proper that such fact should be communicated to the other signatory countries, who, in the same administrative manner that is employed for granting them, shall decide what effect their nullity in a foreign country should produce. In case of establishing the International Bureau, this latter would be the proper agency for making the fact known to the other countries of the Union; and this is the stipulation of the Convention of Madrid of April 14, 1891.

Since it is not intended at present, to promote the unity of national legislations, it would not be wise to establish the rule, that in case of the nullity of a patent or trade–mark in the country of its origin, the same should also be annulled in the other countries. The act of nullity may be due to very different causes, which causes may either exist in all the countries of the Union, or may be limited to the country of origin only and may appear inexplicable in the country into which the importation is to be made; it may be due to the consequences of bad faith on the part of the owner of the annulled title, or for other reasous; which do not imply any culpability; and as the national laws differ with regard to the granting of privileges, so it is also likely that they may differ regarding the causes of nullity.

VII. As the proposed Treaty is more ample than those of Montevideo, it is but natural that the signatory countries of the latter may prefer the stipulations of a more recent and complete one. But the Treaties of Montevideo will continue in force among those of their signatory countries which are not parties to the new Convention with reference to the countries which have signed both.

VIII. The final clauses of the project alluded to are those employed for facilitating that the Treaty may have its effects, its abrogations, and the adherence to the same by those other States of America, which should not have signed it originally.

The Committee believes that the new wording adopted, the combination of the Treaties or Patents of Invention and Trade–marks, and the measures suggested for establishing an International Bureau of Industrial Property will produce harmony in the opinion of the members of the Conference and will assist in the adoption or the following project proposed by the Committee.

The Conference accepts the following articles of a proposed Treaty on Patents of Invention, Industrial Models and Drawings and Trade–marks of Commerce and Manufacture.

Art. 1. The citizens of each of the signatory States shall enjoy in other nations the same advantages granted by them to citizens in regard to the Trade–marks of Commerce, Manufacture or Models and Industrial Drawings and to Patents of Invention.

Consequently, they shall have the right to the same protection and to identical remedies against any attack upon their rights. (Convention of Paris, March 20 1883.)

Art. 2. For the effects of this Treaty, foreigners domiciled in any of the signatory countries, or who may have in them an industrial or commercial establishment, shall be considered the same as citizens. (Paris Convention.)

Art. 3. Patents of invention and industrial drawings and models, as well as of trade–marks of commerce and manufacture granted in the country of their origin, may be imported to the other signatory States, for the registration and publication, as may be required by the laws of the respective country, and they shall be protected in the same manner as those granted in the State itself. For this purpose the interested parties shall be allowed to apply to the Consuls of the country in which they intend to introduce their trade–mark, drawing or models; which Consuls shall transmit to their Governments the applications, samples models and the necessary funds, delivered to them by the interested parties. This provision does not exempt the articles for which a privilege is solicited, from the obligations which the national laws in regard to factories may establish in the respective country.

Art. 4. The country in which the applicant has its principal establishment or domicile, shall be considered as the country of origin.

In case he should not have any such establishment in any of the signatory countries, that State of the signatory States of which the claimant is a citizen, shall be considered as the country of origin. (Convention of Paris.)

Art. 5. For the purpose of preserving the right of priority of Patents ot Invention, Models. Designs or Trade–marks to be imported, a term of one year, as to the former, and of six months as to the latter, is granted, to be counted from the date of their having been originally granted, to the presentation of the application for the same to the respective authority of the country into which the privilege is to be imported. (Convention of Paris and Treaties Montevideo, on Patents.)

Art. 6. All questions which may arise regarding the priority of an invention and the adoption of a trade–mark, shall be decided with due regard to the date of the original application for the respective patent or trade–mark, in the countries in which they have been granted. (Treaty of Montevideo on Patents.)

Art. 7. The following shall be considered as inventions or discoveries: any new method, or any mechanical or manual apparatus which may be used for the manufacture of industrial products; the discovery of any new industrial product; and the application of improved methods, for the purpose of producing results superior to those already known. (Treaty of Montevideo on Patents.) The drawings and models of manufacture are subject to the rules of inventions and discoveries, in all that does not apply specially to the latter.

There shall be considered as Trade–mark of commerce or manufacture, the sign, emblem or exterior name, which merchants or manufacturers may adopt or apply to their goods or products, in order to distinguish them from those of other manufacturers or merchants, who deal in articles of the same kind. (Treaty of Montevideo on Trade–marks.)

Art. 8. No Patent of invention can be granted with respect to the following:

I. Inventions and discoveries, which may have been published in any country, whether it be a party to this Convention or not.

II. Those that are contrary to morals and to the laws of the country, in which the Patents of invention are to be granted or to be recognized. (Treaty of Montevideo on Patents.)

Art. 9. Trade–marks of commerce or manufactures which are in the case provided for in paragraph II of the foregoing article, are likewise debarred from being granted or recognized. (Convention of Paris.)

Art. 10. The property of a Patent of invention or of a Trade–mark of commerce or manufacture, consists in the right to enjoy the products of the invention, or the use of the Trade–mark, and the right to assign them to others. (Treaty of Montevideo on Patents and Trade–marks.)

Art. 11. The number of years of the privilege shall be that which the laws of the country, in which it is desired to make them effective, may establish. Such term may be limited to that established by the laws of the country, in which the patent of invention was originally granted, if the latter should be shorter. (Treaty of Montevideo on Patents.)

Art. 12. The civil and criminal responsabilities in which those who injure the rights of inventors incur, shall be prosecuted and punished in accordance with the laws of the country, in which the injury has been committed. (Treaty of Montevideo on Patents.)

The falsification, adulteration, or unauthorized use of Trade-marks of commerce and manufacture shall likewise be prosecuted in accordance with the laws of the State, in whose territory the infringement has been committed. (Treaty of Montevideo on Trade–marks.)

Art. 13. There shall be established at Washington, an «International Bureau of Industrial Property» in conformity with the Protocol which may opportunely be agreed upon

As soon as the said Bureau is established, the protection in all the signatory countries of Patents of invention and Trade–marks of commerce and manufactures, which are obtained in the country of their origin, may be secured by the persons referred to in Article 1 and 2, by means of the registration of the same in the said Bureau and the corresponding applications. (Convention of Madrid, of April 14. 1891.)

Art. 14. The declaration of nullity of a Patent or Trade–mark in the country of its origin shall be communicated to the International Bureau, whenever the same shall have been established, so that it may be transmitted by the same to the other Signatory countries.

Until the establishment of said Bureau, the declarations of nullity shall be communicated in authentic form to the other signatory countries, so that they may decide in an administrative manner regarding the recognition which may be solicited for the respective Patent or Trade–mark granted in the foreign country, and as to what effect such declaration is to produce with regard to the Patents or Trade–marks imported into said countries.

Art. 15. The Treaties on Patents of invention and Trade–marks of commerce and manufacture previously signed between the countries subscribing the present Treaty, shall be substituted by the present Treaty from the time it is duly perfected, as far as the relations between the signatory countries are concerned.

Art. 16. The communications, which the Governments who may ratify the present Treaty shall address to the Government of Mexico, for the purpose of making them known to the remaining contracting countries shall be considered equal to the customary exchange of ratifications. The Government of Mexico shall likewise communicate to them the ratification of this Treaty, if it should resolve to ratify the same. (Treaty of Montevideo.)

Art. 17. The exchange of copies in the form of the foregoing article having been made by two or more countries, this Treaty shall take effect thenceforward for an indefinite time. (Treaty of Montevideo.)

Art. 18. In case any one of the Signatory Powers should desire to withdraw from this Treaty, it shall make its abrogation known in the manner prescribed in Art. 16, and the effect of this Treaty, so far as the respective nation is concerned, shall cease one year from the date of the receipt of the respective communication by the countries interested.

Art. 19. The countries of America, that should not have signed this Treaty originally, may adhere to the same in the manner prescribed by Art. 16.

Hall of the Committee, December 30 1901.—*Alberto Elmore.—Alfredo Chavero.—Cecilio Baez.*

SESSION OF JANUARY 20 1902.

Secretary Duret.—The Conference will take up the order of the day. The project submitted by the Committee on Patents, Trade–marks and Weights and Measures is under discussion. (He reads the same.)

His Excellency Mr. Elmore, Delegate from Peru.—In the previous debate the project on Trade–marks only was discussed and was approved as a whole. The new project which now is submitted to the Conference, refers not only to that subject, but also to those relating to designs, industrial models and patents of invention. For this reason it may be said, that it has not been approved as yet, and I therefore would request the Chair to put this new project under discussion, as a whole.

The project having been offered for discussion as a whole, it was unanimously adopted, without discussion, by fifteen votes. The Delegation of Hayti abstained from voting.

Secretary Duret.—The project is adopted as a whole. Art. 1 is now under discussion in detail.

Art. 1. Was adopted unanimously by sixteen votes, the Delegation of Hayti having abstained from voting, and Art. 3 was offered for discussion.

His Excellency Mr. Elmore.—In the report which is being discussed, there are, in parenthesis, some references to the Treaty of Montevideo, the provisions of which are concordant with those which are expressed. I ask to be permitted to make the respective acclaration, so that it may not be understood, as if the approval of the articles contained in the project would imply the approval of these references.

Art. 2 was adopted without discussiou.

Art. 3 was offered for discussion.

His Excellency Mr. Casasus, Delegate from Mexico.—Prescinding from all attemps at oratory, in order to be brief, I ask to be permitted to direct a few remarks to the reporting Committee with regard to this article. The first part of the same enunciates the

right to import foreign trade-marks into each one of our respective countries. I believe this principle to be useless, in as much as in Arts. 1 and 2 equal rights have been granted to citizens and foreigners. If by virtue of these two articles a trade-mark may be registered directly, that is to say, if one which is not registered in the country of its origin may be inscribed, then I understand, that the right to reserve the property of a trade-mark, already previously secured in the country of its origin, is also established. In any case, if it is desired to state this right in a clearer manner, some words might be added to the first part of Art. 1., and with this Art. 3. would disappear. If the Committee believes it indispensable to state the right to import trade-marks, it can be stated in art. 1, and in its final part: «whether they be registered in the country of their origin or not.»

As regards the second part, I am glad, that with the object of facilitating the task of the owners of trade marks and Patents, the consuls are authorized, so that they may act as their legitimate representatives, without the necessity ot accrediting such representation with a power of attorney in due form; but perhaps it would be better, if instead of applying to the consuls of the nations in which the register is to be effected, that the owner of the mark should apply to the consul of his ownnation, accredited in the country in which the mark is going to be registered. The reason for this is obvious. If the foreign consul does not comply with the charge which the treaty imposes upon him, if he violates his mandate, there is no effective means to compel him, while if this obligation is imposed upon the consul of the citizen whose trade mark is to be registered, each nation will punish the consul that may be remiss in the performance of his duty.

While I am glad that the obligation to act as the representatives of the owners of trade marks and patents has been imposed upon the consuls, I believe that it would perhaps be preferable to make the modification which I respectfully propose to the Committee.

His Excellency Mr. Walker Martínez, Delegate from Chili.— With the greatest possible brevity, Mr. President, I will make an observation to the Committee, for the purpose of requesting it, that it maintain its article. In my opinion, this article is calculated to render the transaction of this class of business easier and less costly. In my country, for instance, at this moment, under the laws in force, the individual who desires to ask a privilege, has to appoint an attorney, and how does he do it? By executing a power of attorney, which is an expense, and which has to pass through all the proceedings necessary to render documents of legal effect in another country; while with this provision, all these expenses and proceedings will be avoided.

For this reason, I believe that the article should remain as it is proposed, so that in this manner the benefits which are intended to be derived from it, may be secured.

His Excellency Mr. Casasús.— I have not asked, Sir, that the final part of the article be suppressed, as His Excellency Mr. Walker Martínez perhaps believes, but to the contrary, that it be sustained, although instead of imposing that obligation on the consul of the nation in which the register is to be made, I have suggested that it would perhaps be better to impose it on the consul of the nation of the owner of the mark, in order that the obligation which is imposed may be much more effective.

His Excellency Mr. Elmore.— Commencing with the second observation of Mr. Casasús and of which His Excellency Mr. Walker Martínez spoke, I believe, that the provision should be retained in the form in which it exists in the project.

By the provision, which His Excellency Mr. Casasús proposes, it is intended, that the persons who are living in one country and may desire to register their marks in another, shall apply to their own consul, but for this it would be necessary to give this latter an authorization and send him a power of attorney to the country where it is desired to introduce the patent or mark; while what the Committee proposes is, that the consul of the country where the mark is to be introduced and registered, and which consul is in the same place as the interested party, be the one who is to perform this service. In this manner, the applicant finding himself in the same place with the consul of the country where he desires to register his mark, greater difficulties are avoided.

As regards the first part of the article, the provisions of which are in accord with the Treaty of Montevideo and with that of Paris, I must say, that it is not comprised in Art. 1. of the treaty under discussion; in Art. 1. and 2. it is provided, that foreigners who live in a country, having an establishment or their domicile, or that are naturalized citizens, may exercise their rights as regards trade marks, patents, etc.; but Art. 3. refers to a different situation, it treats of foreigners who have neither an establishment nor their domicile in the respective country.

For this reason, I believe that the Art. 3. should remain in the form which has been given to it by the Committee.

His Excellency Mr. Pablo Macedo, Delegate from Mexico.— I believe that there exists no antagonism between the two ideas presented in this debate if they are considered in their essential part. It might succeed, that in some case the system adopted by the Committee may be the most practical and easiest. I want to give an example, Sir, of a Mexican, who should desire to obtain a privilege in Chili, and that for some reason or other there should be no consulate of Chili in Mexico, or that such consulate be vacant. The progress implied in the idea submitted by the Committee is evident; but it is also evident, that the advantage would be greater, if a Mexican, for instance, could also avail himself of his own consul in Santiago, for the purpose of obtaining the privilege which he desires to enjoy there. I believe, therefore, that these ideas, which have been represented here as antagonistic, would be in complete harmony and would complement each other mutually and favorably, and would facilitate still more the purpose of suppressing powers of attorney and cumbersome formalities for the obtaining of patents. I make free to respectfully submit this idea to the consideration of the Committee, in case it should believe it worthy of being taken into account.

His Excellency Mr. Elmore.— Mr. President: As it seems that the idea is insisted on, that applicants should be enabled to avail themselves of the consuls of their own country, I must call attention to the fact that this point is not proper subject for a treaty. The consuls represent their citizens for many purposes, in the first place, and in the second, if a country desires to give its consuls the power to represent its citizens, it can freely do so by means of its internal legislation, because each country is at liberty to do so, without the necessity of making any treaty whatsoever. For this reason it appears to me unnecessary to so state it in the article under discussion.

His Excellency Mr. Casasús.— Sir, the object pursued in the treaty is not the only and exclusive one of imposing an obligation on the consuls, but that in the nations in which they are to represent citizens as well as foreigners, they should be considered as the legitimate representatives of the same, without the necessity of presenting any power of attorney, and for this a treaty is indispensable. Therefore, if the Committee should accept the suggestions of His Excellency Mr. Macedo, it would explain that it was the object of a treaty, because what is sought to establish is not only that the consuls are to represent the owners of patents or trade marks, but also, that the nations are to recognize them as the authorized attorneys of such owners.

And as I have once taken part in the debate, His Excellency Mr. Elmore will permit me to make an important rectification.

It is not true, that the first part of Art. 3. is taken from the provisions of the Convention of Paris. Articles 1. and 2. of the Treaty under discussion are a reproduction of Art. 2. and 3. of the Convention of Paris: but Art. 4. establishes quite a different thing. That article says: «Art. 4. The person who may have presented an application for a patent of invention, an industrial design or model or a trade mark of manufacture or commerce in one of the contracting countries, shall enjoy a right of priority to present the same in the other states, subject to the right of third parties, during the periods which hereafter are designated.»

Or, which is the same thing, the wording indicates that to the marks and patents deposited in the country of their origin, a period of time is granted, during which they shall have the priority of registry over any other applicant, even if it be a previous one.

His Excellency Mr. Elmore.— Mr. President: In the present circumstances I shall not reply to every remark that may be directed to me; the Delegates possess sufficient knowledge to know how they should vote; but in this case I am compelled to reply, for the last time, to an observation rectifying a fact.

In referring to the acclaration which I made before regarding the Treaty of Paris, I stated in the first place, that Art. 1. and 2. of our project contemplated a different case from that of Art. 3. now under discussion. Regarding Art. 3. I must state, that it is a reproduction as I have said before, of a provision of the Treaty of Paris, and for this purpose, I ask the Assembly to permit me to read the same. It reads as follows:

«Every trade mark of Manufacture or Commerce, duly deposited in the country of its origin, shall be admitted in the same manner to deposit in all the other countries of the Union.»

It was to this that I referred, and not to Art. 4. of the Convention of Paris, which His Excellency Mr. Casasús has just cited.

His Excellency Mr. Bermejo, Delegate from the Argentine Republic.— It appears to me, Mr. President, that we would come a little closer to each other, if we had the formula, which His Excellency Mr. Casasús suggests, in writing, which in my opinion might solve the difficulty.

Regarding the point under discussion, I desire to remark, that in the article, in the form in which it is conceived, attributes are given to the consuls, which perhaps do not agree with the character of that institution. The consul is the commercial agent of a country, charged with watching over the interests of its citizens in their commercial relations, and in the article under discussion, a further obligation is established, to the effect, that the consul should represent, not only his fellow citizens, but also all the inhabitants of the country in which he is accredited, whatever be their nationality. For example, the Argentine consul in Mexico would be obliged by this treaty to transact and transmit to his country all the business regarding trade marks, not only of Mexicans, but of all the inhabitants, independent of the obligation which he has with respect to his own countrymen. From this would result, that each consul would have to be the attorney, not only of his fellow-citizens, but also of foreigners even, which demonstrates the inacceptability of the vision. For this reason I would request His Excellency Mr. Casasus to submit his proposition in writing, which probably would help a great deal to extract us from the somewhat false position in which we find ourselves.

His Excellency Mr. Casasus.— In the session of the afternoon, and responding to the suggestion made by His Excellency Mr. Bermejo, I shall submit to the Commitee the text which comprises the modification which I have suggested. In conclusion I will state to the Conference, that the Committee incurs in an error when it says, that Art. 3. under discussion is a reproduction of a precept already established in the Convention of Paris. His Excellency Mr. Elmore has read Art. 6. of the Convention of Paris. That article says:

«Art. 6. Every trade mark of manufacture or commerce, duly deposited in the country of its origin, shall be admitted in the same manner in all the other countries of the Union.»

From this it will be seen, that the said article has a distinct purpose: it is not a question of authorizing the importation of patents, designs and trade marks, but that of establishing in a clear and precise manner, that the law which governs in judging of the nature of trade marks, is that of the country of their origin, and for that reason it says, and justly so, that the mark shall be accepted in the same manner in which it has been registered in the country of its origin, in conformity with the precepts of its legislation.

The intention of this precept, therefore, is different, and with abundant reason do I sustain that Article 3 now under debate, does not exist in the Convention of Paris. Besides, this article only refers to trade marks and not to patents, and designs.

His Excellency President Raigosa.—The discussion will be continued in the session of the afternoon.

SESSION JANUARY 20, 1902.
(Afternoon Session.)

Secretary Macedo.— The discussion of Art. 3. of the project of the Committee on Patents, Trade marks and Weights and Measures will be continued.

His Excellency Mr. Casassus Delegate from Mexico.—Sir: with the object of responding to the polite suggestion, which His Excellency Mr. Bermejo had the kindness to make to me, I have put in writing