

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 to grant patents has heretofore been assigned, as for instance, 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 they are essentially distinctive marks of merchandise or of analogous products, belonging to different merchants or manufacturers.

The two reasons which the Committee presents for justifying its opinion, refer to the cases in which the legislation of each country has to be applied within its own territory; but they forget the extra-territorial effects of the laws on trade-marks and the conflicts between legislations which may arise from this cause, and which is precisely that which now should be the exclusive object of our efforts and study.

In the internal affairs of each country, it is what the Committee truly says: every mark which becomes public property ceases to be a trade-mark; but the same does not occur, when a trade-mark of limited duration, according to the legislation of the country of its origin, is registered in another, in which trade marks are of perpetual duration; because then the case may happen that they become public property in the country of their origin and nevertheless their owner pretends to make them effective in another, prohibiting their use and employment to those who may wish to adopt them, precisely because they find them already to be public property.

Well, then, if a conflict may exist on account of the diversity of legislations, what principle will have to be applied to solve it?

This principle is that which I desire to incorporate in the law of the convention on trade marks, which we are now occupied in preparing in this conference, and which I formulate in these terms:

«The rights of trade marks which have become public property in the country of their origin cannot be made effective.»

What are the bases of this principle of International Private Law?

If it be true, that in order to deposit in a country a trade mark already registered in the country of its origin, the owner must subject himself to the rules and conditions prescribed by the legislation of the country where the property is intended to be reserved anew, then it is also true that, that which we can consider as a substantive right of trade marks, that is, that which has to determine their nature and fix their rights, can be no other, than that which is established by the legislation of the country of their origin.

The object which each nation pursues in consenting to the registry of foreign trade marks, is to protect them equally with the national ones, to make all obstacles disappear which may oppose themselves to this, and to expand, so to speak, for the trade marks the national territory where they had their origin, and make them international.

Well, then, in these cases, every mark already registered in the country of its origin, comes as such, looking for support and protection from one country to another, but invoking in its behalf, in so far as its character, validity and duration is concerned, the

laws of the country of its origin, because these are the ones, that established their legal standing. In other terms, the legal character of each mark must be appreciated in international relations, according to the legislation of the country of its origin, and not according to that of the countries where the mark is going to be registered.

As every foreigner, when he applies to a country asking the protection of its laws for his trade mark, does in effect no more than to invoke a right acquired in his own country, the result is, perforce, that he has no right to claim the protection of those laws, from the moment in which his property has ceased to exist in his own country.

Consequently, from the moment a trade mark has become public property in the country of its origin; from the moment the right of its property has been lost for any reason or ground whatsoever, but above all, whenever the term designated in favor of the mark has expired in the country in which the mark had its origin, it is inconceivable, that its owner should be able to ask for the protection of such mark in foreign countries, when it has already ceased to enjoy protection in the country of its origin, when it may be said, that it has already ceased to exist in a legal sense.

But my thesis is not only based upon the principles of Private International Law to which I have just referred, but they are also supported by the International Law as established in the conventions of Europe and America, which I am able to prove with the greatest facility.

The conventional International Law has established the following two principles:

I. The duration of the protection of a foreign trade mark can be less, but never greater than the term which is enjoyed by national marks.

II. The rights of trade marks which have become public property cannot be made effective.

The former principle has been included in the treaties concluded between France and the United States on April 16 1869; between France and Sweden and Norway on December 30 1881; between Belgium and France on October 31 1881; and between France and Spain on February 6 1882.

The second principle has been recognized in the additional article to the Treaty of Amity and Commerce concluded between the republic of Chili and Belgium on June 3, 1875, and in the treaties concluded by that country with the United States on March 8, 1875, and with Portugal on October 8, 1866.

But there is still more. The special laws of some nations, Germany for instance, have recognized the same principle. The German law of January 30, 1874 does not grant any rights in favor of trade marks, except for such time as is equal to that during which they enjoy protection in the foreign country in which they have had their origin.

Finally, the International Convention signed at Madrid on the 14 of April 1891 says in Art. 6.: «the protection which results from registry in the International Office shall last for twenty years from the date of the registry, but it cannot be invoked in behalf of a mark, which should have ceased to enjoy legal protection in the country its origin.»

From this will be seen that not only precepts of Private International Law, but also of the conventional International Law establish the principle which I have been endeavoring to sustain, in order that it

may be included in the treaty which the Conference will have to approve.

I respectfully submit, therefore, my amendment for the consideration of the reporting Committee, as well as for that of all the Delegates.

*His Excellency Mr. Elmore.*—In treating this point, a difference has to be made between patents of invention and trade marks. Patents of Invention impose a restriction upon industry, so that there exists a privilege during the term of the patent, for which reason there is a necessity for limiting its duration. With trade marks this is not the case.

Probably His Excellency Mr. Casasus has not read the article with care, in so far as it refers to the number of years.

What does a trade mark signify? There is no new creation, no work, no invention; the mark is a sign, which is adopted as a distinctive one, and its value depends upon the worth of the merchandise or article; and only in this manner has the trade mark any prestige with the public; so that to the latter, it does not matter whether the mark is to last perpetually, but that the products are good; in this manner they may be perpetual, as in fact they are by some legislations, and those which fix a limited term, authorize their prolongation.

It is for this reason, that the Treaty of Montevideo, when treating of patents, designated as a cause for denying a patent, the loss of the novelty of the invention; but in treating of trade marks, it does not put this limitation, and in the project we have followed the prescriptions fixed in the Treaty of Montevideo. On the other hand, the convention of Paris has been accepted by Brazil, Guatemala, Salvador and other nations; so that seven nations of those represented here, have accepted the principle of not fixing a term for the duration of trade marks, and it would not be worth while to make innovations with respect to what had been established by the conventions referred to.

I consider the amendment unnecessary, and for that reason I shall oppose it, and will sustain the wording of the article in the form in which it exists in the project of the Committee.

*Secretary Duret.*—The Committee having declined to accept the article proposed by His Excellency Mr. Casasus, in substitution of Art. 9. of the project, the Conference is asked whether it approves the text proposed by the honorable Delegate.

The vote having been taken, the amendment was rejected by nine votes against four, the United States and Haiti having abstained from voting. In the negative voted: Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, Honduras, Paraguay, Peru and Uruguay; and in the affirmative, Argentine Republic, Bolivia, Guatemala and Mexico.

*Secretary Duret.*—The discussion of Art. 9. of the project continues. None of the Delegates desire to speak on the question. It is adopted by the eleven votes of the Argentine Republic, Bolivia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, Honduras, Paraguay, Peru and Uruguay, with the United States and Haiti abstaining from voting.

Art. 10. being put under discussion, it was adopted without discussion by twelve votes, the United States and Haiti abstaining.

Art. 11. was then put under discussion.

*Secretary Duret.*—His Excellency Mr. Casasus offers the following amendment to Art. 11.: «The number of years of the privilege shall be that fixed by the laws of the country of origin.»

*His Excellency Mr. Elmore.*—As a privilege is a limitation of industry, the result is, that this restriction is an odious one, and for that reason the Committee, in order not to place the foreign industry in a better condition than the national one, has accepted as a general rule the provisions of the Treaty of Montevideo, not to designate for the privilege the duration granted by the legislation of the country of origin, except in the case that it should be the smaller of the two.

*Secretary Duret.*—The Conference is asked if it approves the amendment to art. 11. proposed by His Excellency Mr. Casasus.

The vote having been taken, the amendment was rejected by twelve votes, the Delegations of the United States and Haiti having abstained from voting.

Without discussion, and by the same number of twelve votes, Articles 11. and 12. were adopted; Art. 13. was rejected by ten votes Argentine Republic, Bolivia, Colombia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, Honduras and Uruguay, against three Mexico, Paraguay and Peru the United States and Haiti abstaining from voting.

Art. 14 was then put under discussion.

*His Excellency Mr. Elmore.*—Art. 13. having been rejected, the first part of the article now under discussion should be suppressed, and the article would remain as follows:

«The declaration of nullity of a trade mark shall be communicated in an authentic form to the other signatory countries, so that it may be resolved administratively: regarding the application and the recognition which is desired for the patent or trade mark to obtain in a foreign country, and regarding the effect which such declaration of nullity should produce with respect to the patent or trade mark previously imported into the said countries.»

*Secretary Duret.*—Art. 14. as modified by the Committee is under discussion. None of the Delegates desire to speak.—The conference is asked whether it is to be adopted.

On taking the vote, the article resulted adopted unanimously by thirteen votes, the United States and Haiti having abstained from voting.

By the same number of votes, art. 15 and 16. were adopted without discussion; the United States and Haiti abstaining from voting.

Art. 17. was then put under discussion.

*His Excellency Mr. Alzamora.*—I propose that to the article under discussion the following words be added: «between the governments which should have made said exchange.»

*Secretary Duret.*—Art. 17. with the addition proposed by His Excellency Mr. Alzamora, reads as follows:

«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 between the governments which should have made such exchange.»

The Committee having accepted the amendment,

the vote was proceeded with, the article being adopted by thirteen votes, the United States and Haiti abstaining from voting.

In the same manner, and without discussion, art. 18. and 19. were adopted.

*Secretary Duret.*—The Chair rules that the matter be referred to the Comité on Engrossing.

SESSION OF JANUARY 24, 1902.

*Secretary Duret.*—In compliance with the resolution of the 22nd. inst.,<sup>1</sup> there remain of the disposition of the Honorable Delegate the report of the Comité on Engrossing, upon the following resolutions of the Conference:

I. Treaty upon Patents of Invention, Models and Drawings and Marks for commercial use.

The report referred to, reads as follows:

*Committee on Engrossing.*—The undersigned have the honor to propose the following draft of the Treaty on Patents of Invention, Industrial Designs and Models 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 their own citizens in regard to the trade-marks of commerce, or of manufacture, to the 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.

Art. 2. For the purpose 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.

Art. 3. Patents of invention and those of industrial drawings and models, as well as of trade-marks of commerce or manufacture, granted in the country of their origin, may be imported to the other signatory States, for registration and publication, as may be required by the laws of the respective countries, and they shall be protected in the same manner as those granted in the State itself. This provision does not remove the obligation imposed by national laws requiring the privileged articles to be manufactured in the country enacting such laws.

Art. 4. The Consular Agents of the Nation, to which belong or wherein reside the owners of patents, drawings, models, or trade-marks, shall be considered as the legal representatives of said owners for the purpose of complying with the formalities and conditions established, in order to present the application and secure the filing of said patents, drawings, models or trade-marks, in the country wherein it is intended to use them.

Art. 5. The country in which the grantee has his 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 Nations of which the claimant is a citizen, shall be considered as the country of origin.

Art. 6. For the purpose of preserving the right of priority of Patents of Invention, Models or Designs and of imported Trade-marks, a term of one year

<sup>1</sup> See page 73.

is granted as to the former, and of six months as to the latter, to be counted from the date of their having been originally issued, for the presentation of the application of the same to the respective authority of the country, into which the patent right is to be imported.

Art. 7. All questions which may arise regarding the priority of an invention and regarding the adoption of a Trade-mark, shall be decided with due regard to the date of the application for the respective Patent or Trade-mark, in the countries in which they have been granted.

Art. 8. The following shall be considered a inventions: any new method of manufacturing industrial products; any mechanical or manual apparatus which may be used for the manufacture of said 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. 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.

The signs, emblems or exterior names, that merchants of 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, shall be considered trade-marks of commerce or manufacture.

Art. 9. 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 Treaty or not.

II. Those that are contrary to morals, or to the laws of the country, in which the patents of inventions are to be granted or to be recognized.

Art. 10. Trade-marks of commerce or manufactures which are in the class provided for in paragraph II of the foregoing article, are likewise debarred from being granted or recognized.

Art. 11. The ownership of a patent of invention or of a trade-mark of commerce or manufacture, covers the right to enjoy the products of the invention, or the use of the trade-mark, and the right to assign them to others.

Art. 12. The number of years of the patent right 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.

Art. 13. The civil and criminal responsibilities, 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.

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.

Art. 14. The declaration of nullity of a patent or trade-mark made in the country of its origin, shall be communicated in an 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 previously imported into said countries.

Art. 15. The Treaties on Patents of Invention and Trade-marks of commerce and manufacture, previously concluded by and between the countries subscribing the present Treaty, shall be substituted by the present Treaty from the time of its being 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 its ratification of this Treaty, if it should resolve to ratify the same.

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.

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, as far as the respective nation is concerned, shall cease one year from the date of the receipt of the respective communication.

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

Mexico, January 24, 1892.—(Signed), *Alberto Elmore.*—*Rosendo Pineda*

The Treaty on Patents of invention and Trade-marks, conceived exactly in the same terms as the foregoing report, was signed on January 27, 1902, by the Delegations of the Argentine Republic, Bolivia, Colombia, Costa Rica, Chili, Dominican Republic, Ecuador, Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

NUMBER 9.

## Extradition and Protection against Anarchy.

SESSION OF DECEMBER 23, 1901.

*Secretary Duret.*—The Comité on Extradition and Protection against Anarchism has submitted its report, and the Chair has ruled that it be published and distributed among their Excellencies the Delegates. (The report was read.)

SESSION OF DECEMBER 23, 1901.

(Afternoon Session.)

*Secretary Duret.*—The Comité on Extradition and Protection against Anarchism has presented some modifications to its report which was read this morning, and asks that it be printed with those modifications. The text of the reformed report is as follows:

### REPORT of the Comité on Extradition and Protection against Anarchy.

Several treaties of extradition have already been entered into between various of the American Republics in order to enforce, in an effective manner, their laws against offenders seeking refuge outside of their own territory, but the signing of a general treaty by all the Republics, establishing common rules and principles, as has already been suggested at the Congress of Montevideo, will doubtless prove to be more convenient. By this means universal justice will be better satisfied. In order to form said treaty, it is necessary to consult the different provisions of the treaties already in existence so as to consider all, or most of them. In this manner it will be well received, because it will not antagonize any pre-existing idea, nor any acquired interests. Such are the bases of the present project.

It begins by establishing the obligation of delivering the criminals whose extradition is asked for.

In the second place it establishes its application as against all accused, or guilty, of common of-

fences. Treaties contain as a rule a list of offences; but if the enumerations contained in the laws are deficient and dangerous, these can easily be corrected through their abrogation; hence there is all the more reason for their exclusion from treaties and for their substitution by general provisions. Mexico has already done so in the last treaty celebrated with Italy, and Chili; in those celebrated with Spain, Brazil and Portugal, in 1896 and 1897.

It is provided that none of the contracting parties shall be obliged to deliver its own citizens, a rule which is always exacted by some of the American Republics; but they are at liberty to deliver them whenever they should deem it advisable.

The present treaty provides, as it has been prescribed in former ones, that the nation upon whom the demand has been made shall have the right to try and punish the offender for the acts committed within its own territory; the right of denial of the surrender is granted, if the penalty has prescribed, for whenever there is prescription the offence ceases to exist legally.

The case of an offender being claimed by two or more nations is taken under consideration, and the right of preference is given in favor of that wherein the more serious offence has been committed.

It establishes the general principle of all treaties in existence, providing that the offender demanded cannot be tried for a previous offence, unless it be the very one to which the extradition applies, or another connected therewith.

The proceedings for demanding the extradition provide also for those connected with the transit of the offender in a clear and simple manner.

It was difficult to apply the principle of extradition to anarchists because, on the one hand, the individual liberty of man in his ideas and beliefs must be considered and, on the other, the crimes