The difficulties to which these stipulations have given rise in England are well known.

The fundamental principle of the Union, as fixed in Article II. of the Convention, is that subjects of any State of the Union shall enjoy in the other States the same protection as natives for patents and trade-marks, but no more. It is difficult to reconcile this principle with the stipulations of Article VI. and paragraph 4 of the final protocol; and the problem has already become the subject of judicial decisions and of official correspondence in England.

In accordance with our instructions, we first submitted to the Conference the following proposition, founded upon a suggestion originally made by Mr. Herbert Hughes, as a means of giving effect to the provisions of section 10 of the Patents, Designs, and Trade-marks Act of 1888, and otherwise meeting the difficulty:—

Article VI. to be maintained in its present form, with addition of the following provisions:—

This ground of refusal is applicable to marks containing—

(*a.*) Public arms and decorations.

(*b.*) A word or words referring to the nature or quality of the goods, or a geographical word or words, unless the depositor state in his application that he lays no claim to any exclusive right to the use of these words or names.

(*c.*) The name or names of a person or company, unless such name be printed or woven in a distinctive shape, or consist of the written signature in original or *fac simile* of the person or company which makes the deposit.

Paragraph 4 of the final protocol to be suppressed.

We accompanied this proposition by the "*Exposé des Motifs*" which forms Enclosure 1 in the present despatch.

This proposition met with little support, and our next attempt to meet the difficulty was to concur in the making of a proposal by the Austrian delegate to the following effect:—

Replace the first paragraph of Article VI. by the following:—

"No trade-mark regularly deposited in the country of origin can be refused registration in the other countries of the Union except for reasons which would equally prevent the registration of marks by natives."

This proposal would, we believe, have secured a majority of votes, but evidently did not command the unanimity necessary for a revision of the Convention.

After a prolonged discussion lasting over several days, we recurred to our original proposal, as amended in the following shape:—

The English delegation proposes to maintain in its integrity Article VI. of the Convention, as well as No. 4 of the final protocol, with the addition of the following provision:—

"It shall be permissible to each of the contracting States to refuse deposit in the following cases:—

"1. Marks consisting exclusively of the name or names either of a person or of a company, unless these names be presented for deposit in a distinctive shape, or consist of the signature in original or in *fac simile* either of the person or of the company which makes the deposit. This provision does not in any way infringe Article VIII. of the Convention.

"2. Marks consisting either of a designation necessary for the indication of the nature or quality of products, or of geographical names, unless the depositor in his application makes a declaration to the effect that he lays no claim to any exclusive right to the use of these designations or names by themselves, and without prejudice to the protection to which indications of origin are entitled.

"Denominations which do not indicate origin, as well as invented names in the two preceding cases (1 and 2) shall continue to be protected.

"3. Marks which include public arms or decorations without sanction from the proper authorities."

It is probable that this would have been sufficient to meet the existing English law, but the form is complicated owing to the necessity of making compromises to meet the views insisted on by various delegates, and we should not recommend that this form should be adopted as the best, in case the matter should be hereafter reopened by Her Majesty's Government.

The proposition in question was put to the vote with the following result: *Ayes*, 9; *Noes*, 5; one abstention. Germany and Austria supported our proposal, but not being yet members of the Union, had no votes.

Ayes.—Holland, Switzerland, Norway, Sweden, Denmark, Spain, Brazil, Servia, Great Britain.

Noes.—France, Tunis, United States, Italy, Portugal.

Abstaining.—Belgium.

Supporting, without vote.—Germany, Austria.

The practical result, therefore, was 11 to 4 in favour of our proposal. There is some reason to believe that the United States delegate might have reconsidered his vote if the question had been reopened, and that possibly Italy might have given way if eventually unanimity had been secured.

The chief, and, indeed, the only serious, opponents to the principle of our proposals for an alteration of Article VI. were the French delegates, who rejected every suggestion put forward by us on this point, and who were firm in maintaining the existing text intact. We could not move them from this position, even by pointing out that the logical consequence of their attitude was that if, say, in a South American State, where the French or English language was not spoken, any one succeeded in obtaining the registration of the words "Bordeaux," "Burgundy," or "Champagne," as trade-marks, Great Britain might be compelled, on a strict interpretation of Article VI. and paragraph 4 of the final protocol, to register these words as trade-marks in the form originally registered, and that the exclusive use of those words would then be vested in the person so registering them, as against even wine-growers in those very districts seeking to sell their wares in Great Britain.

It became clear in the course of the discussions that the practice of many States of the Union is identical with our own in this particular, though the reasons given may be different, and we consider that the decisive majority obtained on our proposal is a sufficient argument in favour of the maintenance of the existing practice of the English Courts.

The result of the vote being a failure to obtain unanimity, it was evident that Article VI. of the Convention could not at present be amended, and, as we do not think it desirable to make any further efforts at conciliation, the question was reserved for ulterior consideration.