

Even assuming that the interpretation as to the court's jurisdiction is a logical result of the reasoning in Judgments Nos. 2 and 5, there is still another ground upon which the court might reasonably have assumed jurisdiction. If the alleged breach were under consideration for the first time, a different question would have been presented. But the alleged breach concerned and placed in issue *the completion of the readaptation ordered by Judgment No. 5*. In other words, the refusal to take jurisdiction seems to have rendered futile the carefully considered judgments rendered on the previous submissions. Let us analyze the results reached. The court has held that Great Britain had violated its international obligations in respect to the Mavrommatis concessions in certain particulars (Judgment No. 5). The court was properly seized of jurisdiction to so decree (Judgment No. 2). The proper remedy was held to consist in a readaptation of the concession thus violated (Judgment No. 5). In consideration of such readaptation, the concessionaire was compelled to surrender all rights under the earlier concessions. *And yet* the mandatory, by failing to take the necessary steps to make the new concession definite, could annul both the old and the new concession without right of redress through the Permanent Court (Judgment No. 10). As Judge Nyholm puts it in his dissenting opinion: "It follows that by the choice of his *own line of action*, a Mandatory may abolish the jurisdiction of the Court, an inadmissible proposition" (p. 31). An American lawyer might say that under the principles of novation, the redress to which the concessionaire was concededly entitled under the old contract could not be deemed accomplished until the new concession came definitely into effect.

It should be noted that of the judges who constituted the majority of the court in Judgment No. 10, Lord Finlay, Judge Moore and Judge Oda, having dissented from Judgment No. 2, were opposed to the assumption of jurisdiction by the court from the beginning. Judges Nyholm, Altamira and Caloyanni (the national judge) dissented from the present judgment.

The importance of the decision lies not so much in the questions of private rights which were involved (the claim exceeded an equivalent of one million dollars), but in the seeming emasculation of the control which it was believed the Permanent Court would possess over the exercise of the mandate. The jurisdiction in respect to the interpretation and application of the mandate, which many believed to be *general* in scope, subject to specific exceptions, now appears to be available only as *an exception*.

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#### INTERNATIONAL PROTECTION OF PROPERTY IN NEWS

For some years efforts have been made to secure international legislation for the protection of a so-called "property in news." The national legislation of several countries is often referred to as having recognized the existence

of such a property right.<sup>1</sup> In South Australia, for instance, a statute of 1872 purported "to secure, in certain cases, the right of property in telegraphic messages" received "from any place outside the Australian colonies"; and this statute seems to have served as a model for legislation enacted in other British possessions. Elsewhere, legislation forbids the reproduction of published news within a certain interval after its original publication. Such legislation has been recently enacted in Bulgaria, Finland, Iceland and Russia. A recent Italian law restricts the publication of news and news items by requiring an indication of the source in each case. In some countries, the publishers of news must find their protection in the general copyright law.

In the United States, the recognition of a "property in news" was long advocated by Mr. Melville E. Stone, a director of the Associated Press.<sup>2</sup> Most of the cases relied upon in support of this thesis fall short of sustaining it, though the "ticker" cases,<sup>3</sup> and cases on race-results<sup>4</sup> may be thought to furnish some support for it. It is only to a limited extent that the publishers of news are protected by the American law of copyright.<sup>5</sup> The issue presented to the Supreme Court of the United States in *International News Service v. Associated Press*,<sup>6</sup> was quite clearly one of unfair competition, and did not call for a decision as to property in news. The *International News Service* was enjoined from using, or causing to be used gainfully, news of which it acquired knowledge by lawful means (namely, by reading publicly posted bulletins, or papers purchased by it in the open market), merely because the news had been originally gathered by the *Associated Press* and continued to be of value to some of its members, or because it did not reveal the source from which it was acquired. The fullest discussion of the question of property in news was in the dissenting opinion of Brandeis, J., who reached the conclusion that the courts were not the proper agencies to define the protection which should be accorded.

The problem of devising adequate protection for news gatherers and news publishers also has an international aspect. News often relates to what is happening in other countries. It may be gathered in one country, published in a second, and protection may be sought against its premature publication

<sup>1</sup> The legislation of various countries is reproduced in League of Nations Document, C. 352, M. 126, 1927, pp. 17-28.

<sup>2</sup> To this end, two large volumes, entitled *The Law of the Associated Press*, were published in New York in 1919.

<sup>3</sup> See, for example, *Chicago Board of Trade v. Christie Grain & Stock Co.* (1905), 198 U. S. 236; *Hunt v. N. Y. Cotton Exchange* (1907), 205 U. S. 323; *National Tel. News Co. v. Western Union Tel. Co.* (1902), 119 Fed. 294; *Chicago Board of Trade v. Tucker* (1915), 221 Fed. 305.

<sup>4</sup> *Exchange Tel. Co., Ltd. v. Central News, Ltd.* [1897], 2 Ch. 48.

<sup>5</sup> See *Tribune Co. of Chicago v. Associated Press* (1900), 116 Fed. 126; *Chicago Record-Herald Co. v. Tribune Association* (1921), 275 Fed. 797.

<sup>6</sup> (1918), 248 U. S. 205.

in a third. During the South African War, copyright of news published in London and cabled to Chicago was refused in the United States.<sup>7</sup> The larger news services in different countries have arrangements for the exchange of news gathered, and some of them operate as distributors in more than one country. For this reason various attempts have been made at international conferences to secure some kind of protection for property in news. The subject was considered at length at the Paris conference on protection of literary and artistic property in 1896; but both the Berne Convention of September 9, 1886, and the additional act of May 4, 1896, expressly exclude from the protection accorded to articles in journals and reviews, *nouvelles du jour*. In the revision of the Berne Convention made at Berlin, November 13, 1908, it was more specifically provided (Art. 9) that "the protection of the present convention does not apply to *nouvelles du jour* ou *aux divers* which have the character of simple press information."<sup>8</sup> When the convention on the protection of industrial property was revised at The Hague in 1925, new provisions were added which may be applied to cover the protection of news publishers to the extent that interference with their enjoyment of the fruits of their effort may be found to be unfair competition. The revised article (10 *bis*) reads:<sup>9</sup>

The contracting states are bound to assure the *ressortissants de l'Union* effective protection against unfair competition (*la concurrence déloyale*).

Any act of competition contrary to honest practices in industrial or commercial relations shall constitute an act of unfair competition.

Especially (*notamment*) the following are forbidden:

1. Any action of such a nature as to create confusion of any sort with the products of a competitor.
2. False allegations, in carrying on trade, of such a nature as to discredit the products of a competitor.

In 1925, the Assembly of the League of Nations envisaged a conference of press experts "to discuss all technical problems, the solution of which, in the opinion of experts, would be conducive to the tranquilisation of public opinion in various countries." Three preliminary meetings were held, a meeting of news agency representatives in August, 1926, a meeting of directors of press bureaux in October, 1926, and a meeting of journalists in January, 1927. These groups manifested a lively interest in the subject of property in news. The committee of news agency representatives thought it "desirable that endeavors should be made to secure an international understanding for the unification of legislation in the matter of property in news on the basis of the following principles: all news obtained by a newspaper or news agency, whatever its form or content and whatever the method by

<sup>7</sup> See *Tribune Co. of Chicago v. Associated Press* (1900), 116 Fed. 126.

<sup>8</sup> See the excellent study, "*La Convention de Berne et le Droit de Reproduction en matière de Journaux et de Publications Périodiques*," *Le Droit d'Auteur*, 1926, pp. 73-82.

<sup>9</sup> See *La Propriété Industrielle*, 1925, pp. 225-226.

which it has been transmitted, shall be regarded as the property of such newspaper or agency for as long as it retains its commercial value." The committee of journalists expressed a "strong hope that a solution may be found by the unification of legislation on literary and journalistic property." A draft law was elaborated by the Secretariat of the League of Nations during the summer of 1927,<sup>10</sup> and placed before the Conference of Press Experts which assembled in Geneva on August 24, 1927. The object of this draft was "to ensure that the news agency and the newspaper shall reap the full advantage of their efforts, their initiative and their expenditure for the purpose of obtaining news." To this end, it was proposed to be agreed that "agencies, newspapers and undertakings established for the purpose of collecting and distributing news have a temporary right in such news," the term "news" being defined to include "information of any kind the value of which depends on its novelty and not on the form in which it is presented." Free reproduction was provided for only "if within . . . hours after receipt, the news has become public property in any given place." The draft submitted was "based on the conception of protection afforded by national law" uniform in various countries, but it was contemplated also that the problem "might be solved by an international convention."

When this draft came before the Conference of Experts, a sharp difference of opinion developed among the members of the conference. The Secretariat draft was not considered in great detail, for the discussion was largely confined to the general principle involved in "property in news." At the end of its deliberations, the conference adopted the following resolution:<sup>11</sup>

The Conference of Press Experts lays down as a fundamental principle that the publication of a piece of news is legitimate, subject to the condition that the news in question has reached the person who publishes it by regular and unobjectionable means, and not by an act of unfair competition. No one may acquire the right of suppressing news of public interest.

(a) Unpublished News.

The Conference is of opinion that full protection should be granted to unpublished news or news in course of transmission or publication in those countries in which such protection does not already exist.

It shall be illegal for any unauthorized person to receive for publication or to use in any way for the purpose of distribution through the press, through broadcasting, or in any similar manner information destined for publication by the press or through broadcasting. . . .

(b) Published News.

In view of the widely differing conditions obtaining in various countries, the Conference is of opinion that the question of the protection of published news, whether reproduced in the press or by broadcasting, is one for the decision of the respective Governments concerned, and recommends that any Government to whom application in this respect

<sup>10</sup> See League of Nations Document, C. 352, M. 126, 1927.

<sup>11</sup> League of Nations Document, Conf. E. P. 13, General, 1927, 15.

is made by its country's press should sympathetically consider the advisability of granting suitable protection.

Such protection should, however, permit the reproduction of news within a specified period, subject to acknowledgment and payment.

The Conference affirms the principle that newspapers, news agencies, and other news organizations are entitled after publication as well as before publication, to the reward of their labour, enterprise and financial expenditure upon the production of news reports, but holds that this principle shall not be so interpreted as to result in the creation or the encouragement of any monopoly in news.

In order to realise these principles, it is desirable that there should be international agreement and that the Council of the League of Nations, by resolution, should request the various Governments to give immediate consideration to the question involved.

The adoption of this resolution signalizes the failure, for the time being, of the efforts to secure an international recognition of property in news. In view of the careful preparation of the subject, an early renewal of such efforts seems improbable. The provisions in Article 10 *bis* of the convention for the protection of industrial property would now seem to afford a more substantial basis for securing adequate protection to publishers of news.<sup>12</sup>

The history of the insistence on international protection of property in news is chiefly interesting because of the light thrown on the process of international legislation. It shows quite clearly the futility of attempting to regulate by international action those activities which present national as well as international problems, but as to which thought in many countries has not become crystallized.

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<sup>12</sup> For later action by the Council and Assembly of the League of Nations concerning the report of the Conference of Press Experts, see *League of Nations Official Journal*, 1927, pp. 1103-1108, and *ibid.*, Spec. Supp. No. 53, p. 34. See, also, *League of Nations Document*, C. L. 20, 1928.