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OPINIONS AND DECLARATIONS RENDERED BY THE INTER- NATIONAL COMMISSION ON ZOOLOGICAL NOMENCLATURE

Edited by

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Secretary to the Commission

VOLUME 3. Part 10. Pp. 129-136.

OPINION 191

On the question whether the use of a new name in explanation of a photograph or other illustration distributed by an author to students or colleagues constitutes "publication" within the meaning of proviso (a) to Article 25 of the International Code

LONDON:

Printed by Order of the International Commission on
Zoological Nomenclature

Sold at the Publications Office of the Commission
41, Queen's Gate, London, S.W.7

1945

Price one shilling and sixpence

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INTERNATIONAL COMMISSION ON ZOOLOGICAL NOMENCLATURE

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OPINION 191.

ON THE QUESTION WHETHER THE USE OF A NEW NAME IN EXPLANATION OF A PHOTOGRAPH OR OTHER ILLUSTRATION DISTRIBUTED BY AN AUTHOR TO STUDENTS OR COLLEAGUES CONSTITUTES " PUBLICATION " WITHIN THE MEANING OF PROVISIO (a) TO ARTICLE 25 OF THE INTERNATIONAL CODE.

SUMMARY.—The use of a new name in a note (whether printed or otherwise) in explanation of a photograph or other illustration of an organism does not constitute publication within the meaning of proviso (a) of Article 25 of the International Code, where the author concerned does no more than distribute copies of the explanatory note and of the photograph or other illustration (i) to students attending his lectures or (ii) to his colleagues or (iii) than attach copies of the note and of the photograph or other illustration when distributing separates of a paper dealing with the subject but not containing the new name in question.

I.—THE STATEMENT OF THE CASE.

The question whether the use of a new name in explanation of a photograph or other illustration distributed by an author to his students or to colleagues (either (i) with copies of separates of a paper dealing with the subject but not containing the new name in question or (ii) otherwise) constitutes publication within the meaning of proviso (a) to Article 25 of the International Code was placed before the International Commission on Zoological Nomenclature on 20th February, 1929, by Professor G. Marshall Kay, Columbia University in the City of New York.

2. The particular case with which Professor Marshall Kay was then concerned was the name *Rhynchonella alta* which had been used by Samuel Calvin for a species of the Class Brachiopoda in a printed list of names pasted on to a piece of cardboard on the other side of which was a photograph of a number of fossils, to which numbers had been affixed and to one of which the name *Rhynchonella alta* was applied.

II.—THE SUBSEQUENT HISTORY OF THE CASE.

3. At their Session held in Lisbon in 1935 (Lisbon Session, 4th Meeting, Conclusion 15¹) the International Commission agreed

¹ See 1943, *Bull. zool. Nomencl.* 1 : 40.

" that, when the Commission reached a decision of interest to the general body of zoologists, it was of the greatest importance that that decision should be presented in such a way as to ensure that it was most readily available to all concerned." When therefore on 15th February 1944 the International Commission reached decisions on the questions submitted by Professor Marshall Kay, it was decided that those decisions should be rendered in two *Opinions*, the first being concerned with the particular case of *Rhynchonella alta*,² the second with general principle settled by the decision taken on that case.

4. In accordance with the foregoing decision, the particulars relating to the case of *Rhynchonella alta*, together with the decision of the International Commission thereon, has been embodied in *Opinion* 190.³ In the same *Opinion*, plates are given illustrating the photographs pasted on to the piece of cardboard which was distributed by Samuel Calvin, on which appeared the name *Rhynchonella alta*.

5. The present *Opinion* is concerned therefore solely with the question of principle raised by the case submitted by Professor Marshall Kay.

6. As explained in paragraphs 1 and 2 above, the vote on the interpretation of proviso (a) to Article 25 in relation to the question whether the use of new names in explanation of photographs, etc., distributed by authors to students or colleagues constitutes " publication " was taken concurrently with the vote on the question of the status of the name *Rhynchonella alta* as used by Calvin in or about 1878 in explanation of a photograph of a fossil brachiopod distributed by him to his students. A decision on either of these cases necessarily involved a decision on the other. When therefore on 15th February 1944, the Secretary to the Commission, acting in virtue of the powers conferred upon him in that behalf by Article 7 of the By-Laws, closed the ballot on the case of *Rhynchonella alta*,³ he closed also the ballot on the present case.

III.—THE CONCLUSION REACHED BY THE INTERNATIONAL COMMISSION.

7. The decision taken by the International Commission on Zoological Nomenclature in the present case is :—

² See *Opinion* 190 (1945, *Opinions and Declarations rendered by the International Commission on Zoological Nomenclature* 3 : 109-128).

³ See footnote 2.

that the use of a new name in a note (whether printed or otherwise) in explanation of a photograph or other illustration of an organism does not constitute publication within the meaning of proviso (a) of Article 25 of the International Code, where the author concerned does no more than distribute copies of the explanatory note and of the photograph or other illustration (i) to students attending his lectures or (ii) to his colleagues or (iii) than attach copies of the note and of the photograph or other illustration when distributing separates of a paper dealing with the subject but not containing the new name in question.

8. The following thirteen (13) Commissioners voted in favour of the present *Opinion* :—

do Amaral; Bather; Calman; Chapman; Dymond; Handlirsch; Hemming; Ishikawa; Jordan (K.); Peters; Stejneger; Stiles; and Stone.

9. No Commissioner voted against the present *Opinion*.

10. The following four (4) Commissioners did not vote on the present *Opinion* :—Cabrerá; Esaki; Pellegrin; and Richter. In addition four (4) Commissioners (Arndt, di Caporiacco, Hankó, and Jaczewski), who were elected members of the Commission during the concluding stages of the present case, did not take part in its consideration.

11. During the discussion of the present case, three (3) Commissioners (Fantham, Jordan (D. S.), Stephenson) died, and five (5) Commissioners (Apstein, Bolívar y Pieltain, Horváth, Silvestri and Warren) resigned, without having recorded their votes.

IV.—AUTHORITY FOR THE ISSUE OF THE PRESENT *OPINION*.

WHEREAS the By-Laws of the International Commission on Zoological Nomenclature provide that, except in cases involving the suspension of the rules, an *Opinion* is to be deemed to have been adopted by the said International Commission as soon as a majority of the Members of the Commission, that is to say ten (10) Members of the said Commission, have recorded their votes in favour thereof, provided that, where any proposed *Opinion* involves a reversal of any former *Opinion* rendered by the Commission, such proposed *Opinion* shall obtain the concurrence of at

least fourteen Members of the Commission voting on the same before such *Opinion* is to be deemed to have been adopted by the Commission; and

WHEREAS the present *Opinion*, as set out in the summary thereof, neither requires, in order to be valid, the suspension of the rules, nor involves a reversal of any former *Opinion* rendered by the Commission; and

WHEREAS thirteen (13) Members of the Commission have signified their concurrence in the present *Opinion* :

NOW, THEREFORE,

I, FRANCIS HEMMING, Secretary to the International Commission on Zoological Nomenclature, acting in virtue of all and every the powers conferred upon me in that behalf by reason of holding the said Office of Secretary to the International Commission, hereby announce the said *Opinion* on behalf of the International Commission, acting for the International Congress of Zoology, and direct that it be rendered and printed as *Opinion* Number One Hundred and Ninety One (*Opinion* 191) of the said Commission.

In faith whereof I, the undersigned FRANCIS HEMMING, Secretary to the International Commission on Zoological Nomenclature, have signed the present *Opinion*.

DONE in London, this twentieth day of November, Nineteen Hundred and Forty Four, in a single copy, which shall remain deposited in the archives of the International Commission on Zoological Nomenclature.

*Secretary to the International Commission
on Zoological Nomenclature.*

FRANCIS HEMMING



1945. "Opinion 191. on the Question Whether the Use of a New Name in Explanation of a Photograph Or Other Illustration Distributed by An Author To Students Or Colleagues Constitutes "publication" Within the Meanings of Proviso (A) To Article 25 of the International Code." *Opinions and declarations rendered by the International Commission on Zoological Nomenclature* 3, 129–134.

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