# 附屬書第三十一號　外國人土地所有權ニ關スル在米大使國務長官間往復公文

No. 1.

Imperial Japanese Embassy,
Washington.

February 21, 1911.

Sir:—

In reply to your inquiry about land ownership in Japan and Korea I have the honor under instructions of the Imperial Government to state that land ownership in Japan will be regulated by the law of the country, and foreigners and foreign corporations who comply with the terms of the provisions of the law will acquire the right of ownership of land. In return for the rights of land ownership which are granted Japanese by law of the various states of the United States the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to American citizens from all the states, reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate states.

The rights in real property acquired by Americans in Korea will be respected. As to the recognition of the title



deeds registered in the American Consulate General in Seoul, the Imperial Government are now considering the question with the American Embassy at Tokio and believe that it will be solved satisfactorily to both parties. In case of the extension of the law of land ownership to Korea it will be applied to all foreigners in general including American citizens upon their fulfilment of the provisions of the law on the subject.

Accept, Sir, the renewed assurances of my higest consideration.

(Signed) Y. Uchida.

Honorable Philander Chase Knox,
Secretary of State.

No. 2.

Department of State,
Washington.

February 21, 1911.

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's note of this date on the subject of land ownership in Japan and Korea.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) P. C. Knox.

His Excellency
Baron Yasuya Uchida,
Japanese Ambassador.

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## 附屬書第三十二號　米國政府ノ參考トシテ日本政府ニ於テ作成ノ命令規則改正試案

Rule 21. The following rule is promulgated for the purpose of giving effect to an Executive order of the President issued on ..... 1912, reading:

Whereas, by the Act entitled "An act to regulate the immigration of aliens into the United States," approved February 20, 1907, whenever the President is satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States, or to any insular possession of the United States, or to the Canal Zone, are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of the labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports, to enter the continental territory of the United States from such country or from such insular possession or from the Canal Zone;

*And whereas,* upon sufficient evidence produced before me by the Department of Commerce and Labor, I am satisfied that passports issued by certain foreign governments to their citizens, who are laborers, skilled and unskilled, to proceed to countries or places other than the continental territory of the United States, are being used, contrary to the

intention of the governments issuing such passports, for the purpose of enabling the holders thereof, to come to the said continental territory of the United States to the detriment of the labor conditions therein:

I *hereby order* that alien laborers, skilled and unskilled, making wrongful use of their passports as aforesaid, for the purpose of gaining admission into the continental territory of the United States, shall be refused permission to enter the said continental territory of the United States.

*It is further ordered* that the Secretary of Commerce and Labor, be and he hereby is, directed to take through the Bureau of Immigration and Naturalization, such measures and to make and enforce such rules and regulations as may be necessary to carry this order into effect.

(a) Every alien laborer, skilled or unskilled, applying for admission at any seaport or land-border port of the continental territory of the United States, being a citizen of a country which grants to its skilled and unskilled laborers proceeding abroad limited labor passports only, in which the countries or places of destination are clearly specified, shall be refused such admission, unless in so applying he presents a passport from his government entitling him to come to the continental territory of the United States.

(b) If an alien laborer, being a citizen of a country which grants to its laborers only limited labor passports of the kind described in paragraph (a) of this rule, applies for admission into the continental territory of the United States, and presents no passport, it shall be presumed (1)



that he did not possess when he departed from his own country a passport entitling him to come to the continental territory of the United States and (2) that he did possess at that time a passport entitling him to go to some country or place other than the continental territory of the United States.

(c) If an alien laborer being a citizen of a country which grants to its laborers only limited labor passports of the kind described in paragraph (a) of this rule, presents a passport expressly entitling him to enter the continental territory of the United States, he shall be admitted, if it appears that he does not belong to any of the classes of aliens excluded by the general immigration laws.

(d) Whenever an alien laborer is rejected under paragraph (a) of this rule he shall be allowed the right of appeal to the Secretary of Commerce and Labor, under the same conditions as attach to aliens rejected under the general immigration laws.

(e) If an alien laborer, being a citizen of a country which grants to its laborers only limited labor passports of the kind described under paragraph (a) of this rule, is found in the continental territory of the United States without having been duly admitted upon inspection, the procedure employed under the general immigration laws for the arrest and hearing of aliens who have entered the United States surreptitiously shall be observed, to the end that the right of such alien to be and remain in the United States may be determined; and if it shall appear that such alien falls within the class excluded by the foregoing Excutive Order and has

entered the United States since the date of such Executive Order, said alien shall be deported accordingly to provisions of Sections 20, 21 and 35, of the Act of Congress approved February 20, 1907.

(f) In case any alien is detained or denied admission by virtue of the foregoing Executive Order, he shall in addition to being informed to his right of appeal to the Secretary of Commerce and Labor be advised that he may communicate by telegram or otherwise with any diplomatic or consular officer of his government and shall be afforded opportunity for so doing.

(g) The officials of the Department charged with the enforcement of the immigration laws are instructed that in the execution of this rule scrupulous care shall be taken to see that the courtesy and consideration which the Department requires in the case of all foreigners of whatever nationality are shown to those affected by this rule. All officers of this Department are hereby warned that no discrimination will be tolerated and that those coming under this rule must be shown every courtesy and consideration to which citizens of most favored nation are entitled when they come to the United States.

(h) For practical administrative purposes the term "labor, skilled and unskilled," within the meaning of the Executive Order of ..... 1912, shall be taken to refer primarily to persons whose work is essentially physical or at least, manual, as farm laborers, street laborers, factory hands, contractors' men, stable men, freight handlers,



stevedores, miners and the like; and to person whose work is less physical but still manual, and who may be highly skilled, as carpenters, stone masons, tile setters, painters, blacksmiths, mechanics, tailors, printers and the like, but shall not be taken to refer to persons whose work is neither distinctively manual nor mechanical, but rather professional artistic, mercantile or clerical as pharmacists, draftsmen, photographers, designers, salesmen, bookkeepers, stenographers, copyists and the like. The foregoing definition is subject to change and will not preclude the Secretary of Commerce and Labor from deciding each individual case which comes to him by way of appeal in accordance with the particular facts and circumstances thereof.

(i) Every passport, presented by an alien laborer skilled and unskilled affected by this rule, shall be plainly indorsed in indelible ink by the officer admitting or rejecting the applicant, in such a manner as to show the fact and date of admission or rejection, the name of the officer being signed to such indorsement; after which the passport shall be returned to the person by whom presented.

*Rule 4, Application of Immigration Act.* The provisions of the Immigration Act apply to aliens seeking to enter the United States, except accredited officials of foreign governments, their suites, families and guests. The act also prescribes the conditions of their admission to or exclusion from the United States or any waters, territory or other place subject to the jurisdiction thereof, except the Isthmian Canal

Zone. The act becomes effective when such aliens arrive from any foreign country or other place without the jurisdiction of the United States or from the Canal Zone. The provisions of the Immigration Act do not apply to aliens who have once been duly admitted to the United States or any waters, territory or other place subject to the jurisdiction thereof, passing back and forth between the insular possessions and the continental territory of the United States, except aliens coming from the Canal Zone and except alien laborers, citizens of countries which grant to their laborers proceeding abroad limited labor passports only in which the country of place of destination is clearly specified. The admission of aliens coming from the Canal Zone is governed by the regulations applicable to aliens generally; the admission to the continental territory of the United States, of alien laborers belonging to countries employing the system of limited labor passports above described is governed by the provisions of the Executive Order of the President embodied in Rule 21 hereof.

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## 附屬書第三十三號　布哇轉航禁止命令ノ改正ヲ要請セル外務大臣覺書

The American Immigration Act revised in February 1907, contains the following clause in the latter part of Article 1.

"That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone."

Acting upon the foregoing provision the President issued an Executive Order on March 14, 1907 to the effect that as he was satisfied that passports issued by the Government of Japan to their citizens to go to Mexico, to Canada, and to Hawaii, were being used for the purpose of enabling the holders thereof to come to the continental territory of the United States to the detriment of labor conditions therein, he ordered that citizens of Japan and Korea possessing such limited passports be refused permission to enter the continental territory of the United States: and the Secretary of

Commerce and Labor was directed to make and enforce such rules and regulations as might be necessary to carry this Order into effect, which was done on the same date.

That those provisions are expressly aimed at the Japanese and Koreans is in contravention of the new commercial Treaty between the United States and Japan, thus discriminating between Japanese subjects and other foreign citizens. To remedy these defects and to make no discrimination in letter against Japanese subjects, the above Order and rules will, it is hoped, take a form applicable to all foreigners alike, by replacing the expression "Japanese and Koreans" with "citizens of a country which issues limited labor passports.".

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# 附屬書第三十五號　加州外人土地法（一九一三年）

CHAPTER 113.

AN ACT RELATING TO THE RIGHTS, POWERS AND DISABILITIES OF ALIENS AND OF CERTAIN COMPANIES, ASSOCIATIONS AND CORPORATIONS WITH RESPECT TO PROPERTY IN THIS STATE, PROVIDING FOR ESCHEATS IN CERTAIN CASES, PRESCRIBING THE PROCEDURE THEREIN, AND REPEALING ALL ACTS OR PARTS OF ACTS INCONSISTENT OR IN CONFLICT HEREWITH.

(Approved May 19, 1913.)

*The people of the State of California do enact as follows:*

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Sec. 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United

States and the nation or country of which such alien is a citizen or subject, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Sec. 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stockholders are citizens or subjects, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Sec. 4. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such real property to such heir or devisee, shall order a sale of said real property to be made in the manner provided by law for probate sales of real property, and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such real property.

Sec. 5. Any real property hereafter acquired in fee in



violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner provided by section 474 of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgment in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner.

Sec. 6. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act shall escheat to the State of California. The attorney general shall institute proceedings to have such escheat adjudged and enforced as provided in section five of this act. In such proceedings the court shall determine and adjudge the value of such leasehold, or other interest in such real property, and enter judgment for the state for the amount thereof together with costs.

Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest in the manner provided by section 1271 of the Code of Civil Procedure. Out of the proceeds arising from such sale, the amount of the judgment rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein.

Sec. 7. Nothing in this act shall be construed as a limitation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Sec. 8. All acts and parts of acts inconsistent, or in conflict with the provisions of this act, are hereby repealed.

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## 附屬書第三十六號　加州土地法制定運動ニ關スル在米大使宛外務大臣訓電

The Imperial Government have learned with deep regret and concern of the two measures regarding alien land ownership now pending in the State legislature of California. Both measures appear to be directed against Japanese subjects and if enacted into law would undoubtedly give ground for serious complaint. The Japanese Government are well aware that the question is not at this time ripe for formal international discussion but ardently desiring that nothing shall be left undone tending to strengthen the good relations between the two countries, the Japanese Government have decided to approach the American Government on the subject at the present juncture in the hope that steps will be taken to prevent the adoption of the proposed legislation. Accordingly with this object in view you will see the President and Secretary of State regarding the matter. You will assure them that it has always been and still is the earnest desire of the Japanese Government to maintain relations of the most friendly and cordial nature with the United States. You will point out that it was in furtherance of that desire that the Japanese Government in a spirit of friendly accommodation and good neighborhood so readily and fully yielded five years ago to the wishes of the American Government

respecting Japanese emigration to the mainland of the United States and that it is in pursuance of the same desire that the Japanese Government still continue scrupulously and satisfactorily to carry out the understanding then arrived at. You will add that with a view to promote the relations of friendly intercourse with the United States, the Japanese Government hastened at once last year to accept the invitation to take part in the forthcoming Grand Exposition and are actively making all necessary preparation for the important event. You will explain that the amount of land owned by Japanese subjects in California is very inconsiderable and that such amount must in any circumstances always remain a very negligible quantity but that that fact would not lessen the hardship of those who might be called upon to suffer from unjust and inequitable legislation on the subject. Reserving for the present the question of how far and in what particulars the contemplated enactments are in violation of the existing Japanese-American Treaty and hoping that it will not be found necessary to discuss that phase of the subject, you will impress upon the President and Secretary of State that the measures are clearly contrary to the spirit of good relations and good intercourse which Japan has done so much to foster and encourage and you will strongly urge them to take such steps as may be necessary to prevent the proposed bills from becoming law. You will say that the Japanese Government cannot but regard this question as most serious and important. The public opinion of the nation is deeply aroused and the enactment



of either of the projected measures would be most unfortunate and prejudicial to the sentiments of good will and friendship which have always united the two countries, and would moreover be very injurious to their important commercial relations.

There are other anti-Japanese bills before the California Legislature which are equally objectionable. The Japanese Government are well aware that both the President and Secretary of State have exerted their endeavors to avert unfriendly legislation and it is sincerely hoped that they will continue to use their efforts in the same direction.

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# 附屬書第三十八號　加州土地法ニ關スル日本政府第一回抗議公文

May 9, 1913.

Sir:

I have the honor to acquaint you that my Government have learned, with painful disappointment, of the measure recently passed by the Legislature of the State of California, on the subject of alien land tenure, and that they feel constrained to offer to the American Government, their earnest protest,* which, in pursuance of their instructions, I now respectfully beg to lodge with you, against the new legislation.

In the opinion of the Imperial Government, the Act in question is essentially unfair and discriminatory, and it is impossible to ignore the fact that it was primarily directed against my countrymen. Accordingly, this protest is based upon the proposition that the measure is unjust and inequitable, and that it is not only prejudicial to the existing rights of Japanese subjects, but is inconsistent with the provisions of the treaty actually in force between Japan and the United States, and is also opposed to the spirit and fundamental principles of amity and good understanding,

* 米國政府公表文書ニ據レハ earnest protest ノ代リニ urgent and explicit protest トアリ



upon which the conventional relations of the two countries depend.

It seems to the Imperial Government that the enactment in effect deprives my countrymen of the right to transmit to their legal heirs their already lawfully acquired landed property. Full right of such transmission was a right running with such property, when so acquired, and consequently the annulment of that right, at this time, is clearly in conflict with the third clause of Article I of the treaty, which guarantees to Japanese subjects, in reciprocity, the most constant protection for their property. Moreover, in its relation to house property, the legislation appears to be, in a much wider sense, repugnant to the provisions of the first clause of the same Article, by which Japanese subjects are granted, in reciprocity, and upon the same terms as American citizens, the right to own houses, manufactories, warehouses and shops. All exceptional limitations and restrictions upon or in respect of that right, either in the matter of its transmissibility or otherwise, are thus believed to be irreconcilable with the first and third clauses of Article I of the Treaty.

Again, in regard to the right of my countrymen to lease land for residential and commercial purposes, all limitations and restrictions upon the right contained in the Act, which are not equally applicable to American leaseholders, are, it seems, also contrary to the treaty provisions above referred to.

I beg further to point out that the provisions of the

enactment relating to companies, associations and corporations appear to be no less objectionable. Thus, in case an association, in proceeding to dissolution, decides to distribute among its members any real property now owned by it, all Japanese members would, in discrimination, be excluded from such distribution in abridgment of their vested rights. Other instances of grave injustice in disregard of already existing rights of my countrymen may readily be imagined, more especially in case of an institution, whose stock is purchasable in the open market. For instance, lawful interests of Japanese subjects in such an institution might become liable to escheat without any unlawful act on their part, since the innocent purchase of its stock by aliens of other nationalities laboring under the same disabilities as the Japanese might lead to that result. But, practically speaking, the enforcement of the measure in question would have the effect of depriving my countrymen of the right to own any stock in any company, association or corporation liable to become possessed in California of any real property or any interest therein, for no business man of ordinary business acumen and prudence would take the hazard of confiscation. Nevertheless, such hazard would exist in view of that Act, notwithstanding the parity engagement on the subject of trade contained in Article I and the most favored nation stipulation in all that concerns commerce appearing in Article XIV of the Treaty.

Further, the Act provides in effect that aliens ineligible to citizenship may acquire, possess, enjoy or transfer real



property or any interest therein, only in the manner, and to the extent, and for the purposes prescribed by any treaty now existing between the United States and the country of which such aliens are subjects or citizens. Apart from the question as to whether the term "any treaty now existing" is intended to cover any treaty which may hereafter be concluded in supplement to, or in supersession of, the existing compact, it frequently happens that two friendly nations cease to have any commercial treaty in force between them, without impairing in the least their mutual relations of amity and goodwill. Should such contingency present itself in the intercourse of Japan and the United States, Japanese subjects will apparently be denied all rights relating to real property in California, now guaranteed by the treaty, whereas aliens eligible to citizenship are placed on the national footing, in the matter of such property rights, independently of treaty engagements. Accordingly, the security of the rights acquired lawfully and in good faith by the Japanese would, under the new enactment, be in constant and serious danger, from which aliens eligible to citizenship are safely guarded. Those just rewards of long and honest toil, upon which so many Japanese families depend for their livelihood, might be deprived of all protection under the Act, by causes for which they are in no way responsible.

It may be contended by the framers and supporters of the Bill, that in the event of any concrete cases arising, in which the Japanese find that their rightful claims are disregarded, it will be open for the aggrieved parties to resort

to ordinary process of law for remedy. Considering, however, that such process necessarily involves much delay of time and great hardships for the parties in interest, and that those disadvantages will be wholly unknown in respect of aliens whose eligibility to citizenship has never been called in question, it will be readily conceded that the enactment will operate in effect as a discrimination against my countrymen whose right to become American citizens has not yet been definitively established.

The Imperial Government, while reserving for future consideration other objectionable features of the enactment in question, desire to have it made entirely clear that they attach the utmost importance to the discriminatory phase of the legislation in those affairs of ordinary international commercial concern, in which nations usually accord to peaceful and friendly aliens equal treatment either as a matter of comity or by application of the principle of the most favored nation clause.

The sympathetic and accommodating disposition, with which the American Administration has invariably extended its helping hands to the Imperial Government, in the cause of humanity and international good understanding, encourages them in the hope that the present difficulties will be set at rest in a manner worthy of the historic relations of cordial friendship between the two neighboring nations.

Accept, Sir, the renewed assurances of my highest consideration.

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## 附屬書第三十九號　同上ニ關スル米國政府第一回回答公文

May 19, 1913.

To His Excellency, Baron Chinda,
Ambassador of Japan:

I have the honor to acknowledge the receipt of your note of May ninth, laying before my Government the representations of the Imperial Government of Japan with regard to the law just adopted by the State of California concerning the holding of Agricultural lands by aliens.

The Government of the United States regrets most sincerely that the Imperial Government of Japan should regard this legislation as an indication of unfriendliness towards their people. Being apprized while that measure was still under consideration by the legislature of California that that might be the feeling of the Imperial Government, the President and I very earnestly attempted to induce the legislative authorities of California to reconsider or to modify their plans in the matter, urging that the State should not act as a separate unit in this case but, rather, in cooperation with the federal government. Under the Constitutional arrangements of the United States we could do no more than that.

At the same time, we feel that the Imperial Government

has been misled in its interpretation of the spirit and object of the legislation in question. It is not political. It is not part of any general national policy which would indicate unfriendliness or any purpose inconsistent with the best and most cordial understanding between the two nations. It is wholly economic. It is based upon the particular economic conditions existing in California as interpreted by her own people, who wish to avoid certain conditions of competition in their agricultural activities.

I have not failed to observe that your note calls attention to certain provisions of the California law which you conceive to be inconsistent with and to violate existing treaty stipulations between the two countries, and thus to threaten to impair vested rights of property. The law, however, in terms purports to respect and preserve all rights under existing treaties. Such is its declared intent. But in case it should be alleged that the law had in its operation failed to accomplish that intent, your Government is no doubt advised that by the Constitution of the United States the stipulations of treaties made in pursuance thereof are the supreme law of the land, and that they are expressly declared to be binding upon state and federal courts alike to the end that they may be judicially enforced in all cases. For this purpose the courts, federal and state, are open to all persons who may feel themselves to have been deprived of treaty rights and guarantees: and in this respect the alien enjoys under our laws a privilege which to one of our own citizens may not be in all cases available, namely, the privilege of suing in



the federal courts. In precisely the same way, our citizens resort and are obliged to resort to the courts for the enforcement of their constitutional and legal rights. Article XIV of the treaty, to which Your Excellency refers, appears to relate solely to the rights of commerce and navigation. These the California statute does not appear to be designed in any way to affect. The authors of the law seem to have been careful to guard against any invasion of contractual rights.

Your Excellency raises, very naturally and properly, the question how the case would stand should explicit treaties between the two countries expire or cease to be in force while, nevertheless, relations of entire amity and good will still continued to exist between them. I can only reply that in such circumstances the Government of the United States would always deem it its pleasure, as well as a manifest dictate of its cordial friendship for Japan and the Japanese people, to safeguard the rights of trade and intercourse between the two peoples now secured by treaty. I need not assure Your Excellency that this Government will cooperate with the Imperial Government in every possible way to maintain with the utmost cordiality the understandings which bind the two nations together in honor and in interest. Its obligations of friendship would not be lessened or performed in niggardly fashion in any circumstances. It values too highly the regard of Japan and her cooperation in the great peaceful tasks of the modern world to jeopard them in any way: and I feel that I can assure Your Excellency that there is no reason to feel that its policy in such matters would be

embarrassed or interfered with by the legislation of any state of the Union. The economic policy of a single state with regard to a single kind of property cannot turn aside these strong and abiding currents of generous and profitable intercourse and good feeling.

In conclusion let me thank Your Excellency for the candor with which you have dealt with this Government in this matter and express the hope that this episode in the intercourse of the two great countries which we represent will only quicken our understanding of one another and our confidence in the desire of each to do justice to the other.

(Signed) W. J. Bryan.

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## 附屬書第四十號　同上ニ關スル日本政府第二回抗議公文

Imperial Japanese Embassy
Washington

June 4, 1913.

Sir:

I did not fail to transmit to my Government at once by cable a copy of the note which you did me the honor of addressing to me under date of the nineteenth ultimo in reply to mine of the ninth idem with regard to the law recently enacted by the State of California on the alien land tenure.

That reply did not, I regret to say, have the effect of lessening the sense of disappointment and grave concern experienced by the Imperial Government in consequence of the legislation to which it had reference. Having in view the attitude and action of deep sympathy expressed and taken by the American Administration in the matter, while the measure was still pending in the Legislature of California, the Cabinet at Tokio had good reason, it was thought, to expect some intimation of willingness, on the part of the American Government, to co-operate with the Government of Japan in the endeavor to find satisfactory solution of the problem, instead of the suggestion that the courts of the United States were

open to those of my countrymen who might feel themselves to have been deprived of treaty rights and guarantees.

The persons prejudicially affected by the enactment complained of are expressly limited to those aliens who are not eligible to citizenship. Considering that Japanese subjects are, as a nation, apparently denied the right to acquire American nationality, that they are the principal sufferers from that enactment, and that the avowed purpose of the law was to deprive my countrymen of the right to acquire and to possess landed property in California, the Imperial Government are unable to escape the conclusion that the measure is unfair and intentionally racially discriminatory, and, looking at the terms of the treaty between our two countries, they are equally well convinced that the Act in question is contrary to the letter and spirit of that compact, and they moreover believe that the enactment is at variance with the accepted principles of just and equal treatment upon which good relations between friendly nations must, in the final analysis, so largely depend.

Nor can my Government find in the new law, as you have done, any declaration of the intention to respect and preserve all rights under existing treaties. It is quite true that Section 2 of the Act provides in effect that aliens not eligible to citizenship may acquire, possess, enjoy and transfer real property, or any interest therein, to the extent and for the purposes prescribed by any treaty now existing between the United States and the country of which such alien is a citizen or subject, and not otherwise. But, in the opinion of the



Imperial Government, that provision cannot be reconciled with the treaty stipulations to which they appealed in my former note, and to which they again appeal in this communication. Japanese people own real property, and other interests therein, in California under the existing treaty, as well as in accordance with law. Such property, having been duly acquired, is unquestionably entitled, in virtue of the treaty, to the same "most constant protection and security" as similar property belonging to citizens of the United States. Efforts were no doubt made to bring the measure into accord with the existing treaty stipulations so far as that could be done consistently with the real purpose of the enactment. But having regard to the pronouncement contained in Section 7 of the Act, it may be doubted, whether the Legislature of California considered it absolutely essential to respect the treaty engagements bearing on the subject of alien land ownership, in so far as those engagements could not be reconciled with the wishes of the State in the matter.

In these circumstances, it becomes my duty, under instructions from my Government, to announce to you that the Imperial Government are compelled, much to their regret, to maintain, in its integrity, the protest contained in my previous note on this subject.

I beg to point out, in this connection, that my Government cannot regard as responsive to the actual situation the suggestion contained in your note to the effect that Japanese people are at liberty to appeal to the courts of the United States for the enforcement of their Constitutional and legal

rights. My countrymen who may suffer wrong in consequence of the enactment will no doubt look to those tribunals for relief. But I venture to make it entirely clear to your appreciation that the Imperial Government are firmly convinced that the phase of the controversy now under discussion is itself appropriately amenable to ordinary diplomatic processes. The question at issue is a question between the Government of Japan and that of the United States, as to the true intent and meaning of their existing treaty, and the extent to which the rules and principles of fair and equal treatment may, in comity and good conscience, be invoked in the present case. The wrong complained of is directed against my countrymen as a nation. It was committed by the authorities of a single State of the union, contrary to the expressed wishes and advice of the Federal Government. It is, nevertheless, to that Government alone, that Japan must look to have the wrong undone, since it is with that Government alone that the Imperial Government hold diplomatic intercourse.

The number of my countrymen actually affected by the discriminatory legislation complained of is small, and the quantity of landed property in California actually held by them, both as owners and leaseholders is very inconsiderable. On the other hand, it is a recognized fact that, as a result of a careful and conscientious enforcement of the existing understanding on the subject of labor emigration from Japan to America, the Japanese population in the United States has, since that understanding took effect, shown an annual de-



crease. Accordingly, if the object of the legislation in question was wholly economic, then the conclusion is natural, it seems to the Imperial Government, that the apprehensions, upon which the enactment was based, were unjustifiable and without sanction of good reason, and, I trust, I may be permitted in the present context to add the suggestion that the law under discussion does not concern itself exclusively with agricultural lands. But, even if the basis of the Act had been wholly economic, that fact could not, in the opinion of my Government, be advanced, as a valid and sufficient reason, for annulling or abridging vested rights of property of my countrymen, and I beg to assure you that the Imperial Government have too high an opinion of the sense of right and justice of the American Government, to believe for a moment that that Government will permit a State to set aside the stipulations of the treaty or to impair the obligations of reciprocal friendly intercourse and good neighborhood.

In conclusion I beg, in pursuance of instructions from my Government, to invite your attention to the phase of the present question, to which, in the situation as it existed at the time my former note was addressed to you, it was not deemed either necessary or advisable to advert. I refer to the matter of Japanese naturalization in America in its relation to the question of Japanese land ownership. The provisions of law, under which it is held that Japanese people are not eligible to American citizenship are mortifying to the Government and people of Japan, since the racial distinction inferable from those provisions is hurtful to their just na-

tional susceptibility. The question of naturalization, however, is a political problem of national, and not international, concern. So long, therefore, as the distinction referred to was employed in relation to rights of purely political nature, the Imperial Government had no occasion to approach the Government of the United States on the subject. But, when that distinction is made use of, as in the present case, for the purpose of depriving Japanese subjects of rights and privileges of a civil nature, which are freely granted in the United States to other aliens, it becomes the duty of the Imperial Government, in the interest of the relations of cordial friendship and good understanding between the two countries, to express frankly their conviction that the racial distinction, which at best is inaccurate and misleading, does not afford a valid basis for the discrimination on the subject of land tenure.

Accept, Sir, the renewed assurances of my highest consideration.

Honorable W. J. Bryan,
Secretary of State.

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## 附屬書第四十一號　日米國交問題ニ關スル日本政府特別覺書

The relations of geographic propinquity existing between Japan and the United States, coupled with the circumstance that both counties are steadily advancing along the same lines of peace and progress, make it entirely natural that the two peoples should come into broader and closer contact with each other, commercially, industrially and socially. The relation of neighborhood is inevitable and cannot be changed, even though the contact gives rise to occasional worry and misunderstanding. In the actual and unalterable situation, therefore, the maintenance of relations of genuine friendship and good accord between the two nations, will contribute to the common benefit and material well-being of both, and that result, it should be added, will be assured, so long as each Power extends to the other, fair and equitable treatment in the field of legitimate activities. But difficulties are sure to arise, from which both countries will equally suffer, economically and in all the various avenues of peaceful intercourse, if such treatment is withheld. In these circumstances the two neighboring countries owe it to themselves, to their traditions and aspirations, to find means by which all causes of irritation and discord shall be peacefully and permanently removed. For this purpose it is essential that the inhabitants of both lands, should meet and mingle

in a spirit of mutual esteem, courtesy and toleration, and in their various dealings with each other, should be governed always, by the broad rules and precepts of justice and fair play, and should, also, be careful to avoid all discriminatory treatment tending to hurt or wound the sense of national dignity of a self-respecting people. The Japanese people, although differing by accident, in race, from the inhabitants of America and Europe, are, nevertheless, possessed of the same susceptibilities, inspired by the same aims and aspirations, and guided by the same principles, and they contemplate with full consciousness their high duty among the nations, to contribute their best efforts in the great work of advancing the world's civilization and betterment. They welcome with warm appreciation, the expression of the high value which the United States attach to the maintenance of relations of good understanding between the two nations, because in the full realization of all that is meant by that expression, the Japanese Government confidently look to America the land of noble aims and high ideals—for cooperation and encouragement, in their endeavors in the interest of general peace and harmony.

The Japanese Government fully appreciate the action taken by the Administration in the difficult question now under discussion between the two Governments and they earnestly hope that the President will be pleased to take the foregoing observations into favorable consideration.

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# 附屬書第四十二號　加州土地法ニ關スル日本政府第二回抗議追加覺書

## AIDE-MEMOIRE

In explanation and support of Viscount Chinda's notes of May 9 and June 4, 1913.

### I.

The existing Japanese-American Treaty accords to Japanese subjects, in reciprocity, liberty in the United States to own and lease houses upon the same terms as citizens of the United States, and to lease land for residential and commercial purposes also upon the same terms as such citizens.

The words "to own" are words of the widest significance, and, in the context in which they appear in said Treaty, include, it is maintained, the right to acquire real property in question by all ordinary lawful means, viz., by purchase, by devise and by descent, and those words also, it is contended, cover the right to dispose of such real property, when duly acquired, by all various methods known to the law, viz., by sale, by gift, by bequest and by transmission. In other words, ownership carries with it, as a necessary incident full right of alienation. But all doubts on the subject will be removed, when it is considered, firstly, that the words "liberty to own" appearing in the Treaty are supplemented by a

parity engagement, to the effect, "upon the same terms as American citizens", and, secondly, that the liberty so enjoyed by such citizens being full and complete, the corresponding liberty accorded to Japanese subjects is equally without limitation or qualification.

So too, liberty to Japanese subjects to lease land for residential and commercial purposes, upon the same time as American citizens, naturally carries with it the same freedom in the matter of acquiring and disposing of the leased property.

Again, under the laws actually in operation in California (the new alien land enactment does not take effect until August 10), Japanese subjects have full right to take hold and dispose of all real property and interest therein. That right carries with it the capacity to bequeath and transmit such property.

The Treaty now in force also guarantees to Japanese subjects, in reciprocity, the same most constant protection and security for their property in the United States, that is there enjoyed by American citizens in respect of property belonging to them.

The Treaty of 1894, which was superseded in 1911 by the present one, provided in Article I that, in whatever relates to the succession to personal estate by will or otherwise, and the disposal of property of any sort and in any manner whatsoever, which they may lawfully acquire, the subjects or citizens of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties



and rights as native subjects or citizens, or subjects or citizens of the most favored nation.

Confidently relying upon the foregoing treaty and statutory provisions, Japanese subjects have become owners and lessees of land and houses in California, and the real property so acquired has, for all purposes, become fully vested in such owners. It was in the presence of the state of things that the new alien land law was enacted. It, in effect, deprives all Japanese subjects of the capacity to bequeath and transmit their duly acquired real property or interest therein, and it also denies to such subjects the capacity to acquire any real property or interest therein by devise or by descent. The measure also contains no less objectionable features concerning companies, associations and corporations, but, as this Aide-Memoire is designed to deal exclusively with the provisions of the law which trench upon individual rights, the clauses relating to legal persons are, for the present, reserved.

It is the firm conviction of the Imperial Government that the provisions of the statute in question, which are intended either to abridge treaty rights of Japanese subjects in the matter of acquisition and disposition of real property and interest therein, or to unsettle real estate titles already duly vested under the law of California, are contrary to the express stipulations of the Treaty now in force between Japan and the United States in the following respects:

(a) That, so far as the Act takes away from Japanese subjects the capacity, hitherto freely enjoyed by them, to acquire, by devise and descent, houses for all

purposes, and leasehold of land for residential and commercial purposes, it is in conflict with the first clause of Article I of said Treaty, since that clause accords to Japanese subjects liberty to own houses and to lease land upon the same terms as American citizens, and it will not be contended that the liberty of such citizens in that respect has been annulled or abridged;

(b) That, so far as the Act deprives Japanese subjects of the capacity to bequeath and transmit to their devisees and heirs real property and interest therein, duly acquired by them under said Treaty, it is inconsistent with the first and third clauses of Article I, since, in addition to the guarantee of equal treatment which is contained in the first clause above mentioned, property of Japanese subjects is, by the third clause aforesaid, assured of the same most constant protection, the same equal protection of equal laws, that is accorded to the property of American citizens, and it goes without saying that property rights of such citizens still remain complete and undisturbed; and

(c) That, so far as the Act takes away from Japanese subjects the capacity of bequeathing and transmitting real property and interest therein, already duly acquired by them under the laws of California, it is repugnant to the above-mentioned third clause of Article I of the Treaty, since it impairs obligations of the contracts under which such property was acquired and is held, and thus deprives Japanese subjects of that



equal protection for their property, which the Treaty extends to them.

The Imperial Government are also of the opinion that the Act in question, so far as it takes away from Japanese subjects the right to dispose, in any manner whatsoever, of the real property or interest therein, lawfully acquired by them prior to July 17, 1911, is in impairment of vested rights created under the Treaty of 1894.

The foregoing propositions are made with the greater confidence, since it is found that the principles upon which they rest are fully sustained by the line of decisions of the Supreme Court of the United States, which have contributed to the just renown of that high tribunal.

The decision to which, in the present relations, the Imperial Government especially refer are found in the following cases:

Fairfax's devisee v. Hunter's lessee.

Chirac v. Chirac.

Orr v. Hodgson.

Society for the Propagation of the Gospel v. Town of New Haven.

Geoffroy v. Riggs.

The Chinese Exclusion case.

In Chirac v. Chirac, Society for the Propagation of the Gospel v. Town of New Haven, and the Chinese Exclusion case, as well as in Watson v. Donnelly (New York Supreme Court, 1859), the principle was clearly announced

that duly vested rights, acquired under a treaty, still continue, although the treaty itself is abrogated.

II.

The Imperial Government are equally convinced that the provisions of the land legislation in question are irreconcilable with the spirit and intent of the Japanese-American Treaty, as well as inequitable and at variance with the generally accepted principles which regulate commercial intercourse between friendly states, because such provisions discriminate against Japanese subjects, not only as compared with American citizens, but as compared with subjects of other countries, in a matter in which, internationally speaking, aliens are usually placed on national or most favored nation footing.

While, in the relations between states, the principle of equal treatment is sometimes made amenable to exceptions and qualifications, this is the first instance, it is believed, in which a Power, having in force a reciprocal commercial treaty with a clause guaranteeing most favored nation treatment "in all that concerns commerce and navigation", has ever been placed by the other Contracting State at a disadvantage as compared with non-treaty countries, in matters which, in the treaty, are made the subject of reciprocal concession.

International discriminations are in any case obnoxious, and,if carried beyond limits of actual and recognized necessity, are harmful to international good relations, independently of the question whether they are repugnant to treaty stipulations or not. In the definition of those permissible limits, and in the establishment of the principle of equal opportunity, no country has taken a firmer stand or exercised a more powerful influence than the United States. Thus in 1789, the Secretary of State at Washington, in an instruction addressed to the American Minister in Mexico, announced that "a Mexican statute discriminating against citizens of the United States and other aliens in respect to the capacity to hold real estate in Mexico is in conflict with the Treaty of 1831." (Dr. Moore's International Law Digest, Volume VI, page 702). The treaty, so appealed to, contains no express provisions on the subject of ownership or real estate. It reciprocally accords most favored nation treatment in respect of commerce and navigation, and grants the right of residence, of hiring houses and warehouses for purposes of commerce, and of succession to personal estate, and it also extends protection to persons and property. Accordingly, it must be assumed that the discrimination complained of was in disregard of the spirit and purposes, rather than express words, of the treaty.



But unjust discriminations based upon race are still more objectionable. Russia's severe treatment of Jews has been deeply resented by the United States, and on December 13, 1911, the House of Representatives, by an unusual vote of 301 to 1, passed a resolution in strong condemnation of the action of Russia. The resolution declared:

"That the people of the United States assert as a fundamental principle that the rights of its citizens shall

not be impaired at home or abroad, because of race or religion; that the Government of the United States concludes its treaties for the equal protection of all classes of its citizens without regard to race or religion; that the Government of the United States will not be a party to any treaty which discriminates, or which, by one of the parties thereto is so construed as to discriminate, between American citizens on the ground of race or religion; that the Government of Russia has violated the treaty between the United States and Russia concluded at St. Petersburg December 18th, 1832, refusing to honor American passports duly issued to American citizens on account of race and religion."

And for these reasons, the resolution called upon the President to denounce said treaty. Three days after the adoption of the above resolution, the United States notified Russia of the termination of the treaty, saying that it had been recognized that the treaty was "no longer fully responsive, in various respects, to the needs of political and material relations of the two countries." The action of Russia, it seems, was not directed against American Jews exclusively. It applied equally to all alien Israelites, and, although resting largely upon race and religion, the discrimination complained of was inspired, in part at least, so Russia declared, by economic considerations. If, in the presence of this state of things, the United States Government found sufficient reason to object to Russia's action, then the Imperial Government have much stronger grounds for protesting against



the invidious discrimination of the new California enactment, since those discriminations are, not only irreconcilable with express treaty stipulations, but, being national and racial, are in clear disregard of national susceptibilities.

## III.

In a number of States, the right of aliens to hold real estate has been made to depend upon actual filing of declarations of intention to become citizens. That requirement, as a condition precedent to the exercise of the right in question, cannot be said to be unreasonable or illogical. A relation is thereby established between said right and eventual citizenship, because the continued existence of the right depends upon actual completion of the process of naturalization.

California is the only State, it is believed, in which the right of aliens to hold real property has been made to rest solely upon eligibility to citizenship. Such eligibility, in the context in which it is used, has no relation to the question of citizenship, since no action looking to ultimate naturalization is required. The formula appearing in the new California enactment was employed as a convenient paraphrase to express firm intention to discriminate against Japanese subjects as compared with aliens belonging to white and African races in the matter of ownership of land and houses.

Clear and important distinction may, therefore, be said to exist between the laws of such other States and of California, on the subject of alien land tenure in this: by the

laws of such other States, actual steps looking to ultimate naturalization have to be taken before the right of real estate ownership can be exercised: whereas, by the law of California, the capacity to take such steps is alone sufficient. The discrimination complained of is no less invidious and disregardful of the treaty rights of Japan, because of indirect language in which it is expressed.

IV.

It has been suggested that the power to deal with the question of alien real estate ownership in the United States belongs exclusively to the several States. Controlling decisions of the courts of the United States might be cited in refutation of that suggestion. But it is sufficient to point out that the United States accepted the first and third clauses of Article I of the existing Japanese-American Treaty, as well as Article I of the Treaty of 1894, and that she can not have given her consent to those stipulations, if the power to regulate the question of ownership of real property by aliens was reserved exclusively to the States.

V.

The Imeperial Government, in concluding their present study of the question of the recently enacted alien land law of California, desire to invite attention to the note from the Secretary of State to the American Minister in Brazil, dated March 5, 1875, on the subject of appropriate procedure in a case analogous to the present one. The language used in



that note is so apposite, and supports in such a striking manner the position taken by Viscount Chinda in his communication of June 4, that indulgence is craved for quoting here the words of Mr. Fish:

> "The reference of the claimant to the authorities of the province for redress will not be acquiesced in. Those authorities cannot be officially known to this Government. It is the Imperial Government at Rio de Janeiro only which is accountable to this Government for any injury to the person or property of a citizen of the United States committed by the authorities of a province. The same rule would be applicable to the case of a Brazilian subject who, in this country, might be wronged by the authorities of a State." (Dr. Moore's International Law Digest Volume VI, page 816).

So far as the California enactment injuriously affects individual rights of Japanese subjects, the aggrieved parties will, no doubt, appeal to the Courts for redress. The question now under discussion between Japan and the United States involves interpretation of treaties, and, in the final solution of that question, the two Powers have an equal voice and interest. Consequently the only appropriate recourse at this time is diplomatic. In analogous cases, however, the United States has instituted legal proceedings in defence of existing treaties. The cases in point, to which references are made, are the California School and the Horcon

Ranch cases. In both instances suits were brought by the United States in the Circuit Courts of the United States.

Japanese Embassy,
July 3, 1913.

[Accompaniment]

TELEGRAM RECEIVED JUNE 30 FROM THE MINISTER FOR FOREIGN AFFAIRS.

Imperial Japanese Embassy.
Washington.

Larger part of land actually owned by the Japanese in California was acquired before July 17, 1911, on which date the existing treaty came into force. Consequently such land was lawfully acquired while the treaty of 1894 was in operation. The third paragraph of Article I of that treaty expressly guarantees to Japanese subjects, in reciprocity, the national and most favored nation treatment in the United States in all that relates to "the disposal of property of any sort and in any manner whatsoever, which they may lawfully acquire". That guarantee still holds good in spite of subsequent abrogation of the treaty. The latter point was clearly announced by the United States Supreme Court in Chirac *v.* Chirac in following terms:

It will be admitted that a right once vested does not require for its preservation the continued existence of the power by which it was acquired. If a treaty or any other law has performed its office by giving a right, the expiration of the treaty or law can not extinguish that right.



These views have been repeatedly and consistently upheld by the same court in a number of similar cases. They will be embodied in the aide-memoire, which you will shortly be authorized to present to the Secretary of State. You will draw his attention to this important point which seems to be fully convincing in support of our claim.

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# 附屬書第四十三號　同上ニ關スル米國政府第二回回答公文

Department of State
Washington.

July 16, 1913.

Excellency:

I have the honor to receive and carefully to consider the note which Your Excellency was so good as to adress to me under date of the 4th instant on the subject of the recent act of the legislature of California relating to the tenure of lands by aliens in that State.

I am pained to learn that the Imperial Government, after reading the contents of my note of the 19th of May, in reply to their protest, continue to be of opinion that the act in question is not only unfair but "intentionally racially discriminatory;" that it is "contrary to the letter and spirit" of the treaty between the two countries; and that it is at variance with "the accepted principles of just and equal treatment upon which good relations between friendly nations must, in the final analysis, so largely depend."

In my note of the 19th of May, I did not omit to point out that the California statute, far from being indicative of any national discriminatory policy, was not even to be regarded as an expression of political or racial antagonism but was



rather to the considered as the emanation of economic conditions, which were in this instance of a local character. I cannot help feeling that in the representations submitted by Your Excellency the supposition of racial discrimination occupies a position of prominence which it does not deserve and which is not justified by the facts. I am quite prepared to admit that all differences between human beings—differences in appearance, differences in manner, differences in speech, differences in opinion, differences in nationality, and differences in race—may provoke a certain antagonism; but none of these differences is likely to produce serious results, unless it becomes associated with an interest of a contentious nature, such as that of the struggle for existence. In this economic contest, the division no doubt may often take place on racial lines, but it does so not because of racial antagonism, but because of the circumstance that the traditions and habits of different races have developed or diminished competitive efficiency. The contest is economic; the racial difference is a mere mark of incident of the economic struggle.

All nations recognize this fact; and it is for this reason that each nation is permitted to determine who shall and who shall not be permitted to settle in its dominions and become a part of the body politic, to the end that it may preserve internal peace and avoid the contentions which are so likely to disturb the harmony of international relations.

That the Imperial Government of Japan accept and act upon these principles precise proof is not wanting.

By the Imperial Ordinance No. 352 of 1899, which is understood to be still in force, it is provided:

"Article 1. Foreigners, even those who either by virtue of treaty or custom have not freedom of residence, may hereafter reside, remove, carry on trade and do other acts outside the former settlements and mixed residence districts. Provided that in the case of laborers they cannot reside or carry on their business outside the former settlements or mixed residential districts unless under the special permission of the administrative authorities.

"The classes of such laborers (referred to in the preceding paragraph) and details for the operation of this Ordinance shall be determined by the Minister for Home Affairs."

The Department is advised that this Ordinance was promulgated in order to prevent the immigration of Chinese laborers, who were attracted to Japan by the rise of wages which began in that country after the war with China and has continued ever since. As a result of this rise in wages conditions grew up not unlike those which have existed at certain places in the United States, the objection made in Japan to Chinese Laborers being that they worked for lower wages than the natives. In the summer of 1907, as the Department is advised, two groups of Chinese laborers were excluded from Japan under the application of the Ordinance above mentioned, one of the excluded groups being composed of coolies, the other of skilled artisans such as mechanics. The Department is not advised that the Ordinance has been or is enforced



as against laborers other than Chinese. The Department is, however, far from imputing to the Imperial Government in its enforcement of the Ordinance a design to make a racial discrimination. On the contrary, the Department assumes that the question with which the Imperial Government were seeking to deal was in its essence economic and racial only incidentally, and that this would continue to be the case even if the Ordinance, although it was no doubt originally designed to exclude Chinese laborers, should be applied to laborers of another race.

In certain statements in Your Excellency's note, to which I have heretofore adverted, I am obliged to think that due weight has not been given to the provisions of the treaties between the two countries. Your Excellency is so good as to say that, "looking at the terms of the treaty between our two countries," the Imperial Government are convinced that the California statute "is contrary to the letter and spirit of that compact," and that they also believe that the statute is "at variance with the accepted principles of just and equal treatment."

In these passages two questions apparently distinct and possibly inconsistent are introduced together; for, while it is readily conceivable that a question of treaty right and a question of fair and equal treatment may co-exist, yet, if the matter under consideration has by the contracting parties been made the subject of an express adjustment and agreement, it is hardly open to either party thereafter to say that

the reciprocal measure of treatment which they have voluntarily concurred in establishing is not just and equal.

The treaty to which Your Excellency's note refers is that which was signed at Washington on February 21, 1911, by Mr. Knox, Secretary of State, representing the United States, and by Baron Uchida, your immediate predecessor, representing the Imperial Government.

This treaty was based upon a draft presented by the Imperial Government. In Article I of this draft there is found the following clause:

> "3. They (the citizens or subjects of the contracting parties) shall be permitted to own or hire and occupy the houses, manufactories, warehouses, shops and premises which may be necessary for them, and to lease land for residential, commercial, industrial, manufacturing and other lawful purposes."

It will be observed that in this clause, which was intended to deal with the subject of real property, there is no reference to the ownership of land. The reason of this omission is understood to be that the Imperial Government desired to avoid treaty engagements concerning the ownership of land by foreigners and to regulate the matter wholly by domestic legislation.

In the treaty as signed the rights of the citizens and subjects of the contracting parties with reference to real property were specifically dealt with (Art. 1) in the stipulation that they should have liberty "to own or lease and occupy houses, manufactories, warehouses and shops," and "to lease land for residential and commercial purposes." It thus appears that the reciprocal right to lease land was confined to "residential and commercial purposes," and that the phrases "industrial" and "other lawful purposes," which would have included the leasing of agricultural lands, were omitted,



The question of the ownership of land was, in pursuance of the desire of the Japanese Government, dealt with by an exchange of notes in which it was acknowledged and agreed that this question should be regulated in each country by the local law and that the law applicable in the United States in this regard was that of the respective States. This clearly appears from the note of Baron Uchida to Mr. Knox of February 21, 1911, in which, in reply to an inquiry of the latter on the subject Baron Uchida said:

> "In return for the rights of land ownership which are granted Japanese by the laws of the various states of the United States (of which, I may observe, there are now about thirty) the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to *American citizens from all the States, reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate States.*"

In quoting the foregoing passage I have italicized the last clause for the purpose of calling special attention to the fact that the contracting parties distinctly understood that, in conformity with the express declaration of the Imperial

Japanese Ambassador, the right was reserved to maintain as to land ownership the condition of reciprocity in the sense that citizens of the United States, coming from States in which Japanese might not be permitted to own land, were to be excluded from the reciprocal privilege in Japan.

From what has been pointed out it appears to result, first, that the California statute, in extending to aliens not eligible to citizenship of the United States the right to lease lands in that State for agricultural purposes for a term not exceeding three years, may be held to go beyond the measure of privilege established in the treaty, which does not grant the right to lease agricultural lands at all; and, secondly, that, so far as the statute may abridge the right of such aliens to own lands within the State, the right has been reserved by the Imperial Government to act upon the principle of exact reciprocity with respect to citizens of the individual State. In a word, the measure of privilege and the measure of satisfaction for its denial were perfectly understood and accepted.

In connection with the question of land ownership Your Excellency refers to the subject of naturalization in the United States; and in this relation I observe Your Excellency's statement that "Japanese subjects are, as a nation, apparently denied the right to acquire American nationality." Your Excellency further declares that the provisions of law, under which it is held that Japanese are not eligible to American citizenship, "are mortifying to the Government and people of Japan, since, the racial distinction inferable from those provisions is hurtful to their just national susceptibilities."



Your Excellency very properly acknowledged the fact that the question of naturalization "is a political problem of national and not international concern."

I gladly assume that Your Excellency, in saying that Japanese subjects are "as a nation" denied the right to acquire American nationality, has not intended to convey the impression that the naturalization laws of the United States make any distinction that may be specifically considered as national either in terms or in effect. Nor would it appear, if the legal provisions in question were historically examined, that the Government and people of Japan have any ground to feel that any discrimination against them was intended. But, as the fact is acknowledged in Your Excellency's note that the question of naturalization "is a political problem of national and not international concern," I infer that Your Excellency is not instructed to press the matter, and I will forbear to enter into a more extended discussion of it on the present occasion.

In the note of Your Excellency an apprehension is expressed that, in spite of the fact that the California statute purports to assure to aliens the right to hold real property in the manner and to the extent and for the purposes specified in any treaty, the terms of the law may be found to abridge not only rights of property falling within the terms of the existing treaty but also rights of property acquired in conformity with law theretofore. This Department, however, does not doubt that full protection will be extended by the courts to all vested rights of property. And I desire to add

that if a case should ever be disclosed in which it was maintained by the Imperial Government that the existing property rights of one of its subjects had been impaired by the statute, this Government would stand ready to compensate him for any loss which he might be shown to have sustained, or even, in order to avoid any possible allegation of injury, to purchase from him his lands at their full market value prior to the enactment of the statute.

In conclusion, I have the honor to assure Your Excellency that the subjects of His Imperial Majesty will, as stated in my previous note, find in the courts of the United States, in the manner provided by the Constitution of the United States, full protection for all their legal rights; and I desire further to assure you that this Government will through its proper officials stand ready at all times to use its good offices to secure the prompt and efficacious determination of such suits. In this manner our Governments will cooperate for the preservation of the traditional friendship and mutual consideration which have ever characterized the relations of amity and good will that have prevailed between the Governments and peoples of the two countries.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) William Jennings Bryan.

His Excellency

Viscount Sutemi Chinda,

Japanese Ambassador.

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## 附屬書第四十四號　同上ニ關スル米國政府第二回回答追加覺書

### AIDE MEMOIRE.

Viscount Chinda's Aide Memoire is presented apparently in pursuance of a telegram received on June 30th from the Imperial Minister for Foreign Affairs. In this telegram the statement is made that the larger part of the land actually owned by Japanese in California was acquired before July 17th, 1911, the effective date of the existing treaty; and certain decisions of the Supreme Court of the United States, in Chirac v. Chirac, 2 Wheaton, 259, and other cases are invoked as guaranteeing rights of property which were acquired by Japanese subjects in the United States, while the treaty of 1894 was in operation.

The Department, following the example set in the Aide Memoire, refrains from entering on the present occasion into a minute analysis of each of the judicial decisions thus cited. The Department, however, accepts the enunciation of principle, quoted from the decision in Chirac v. Chirac, "that a right once vested does not require, for its preservation, the continued existence of the power by which it was acquired;" and that "if a treaty, or any other law, has performed its office by giving a right, the expiration of the treaty or law cannot extinguish that right." The Department has already

observed, in its reply to Viscount Chinda's note of the 4th of June, and now repeats, that it does not doubt that full protection will be extended by the Courts to all vested rights of property.

So far as the Aide Memoire relates to rights secured by the existing treaty of 1911, the Department may again recur to the fact that, by Section 2 of the California statute, it is provided that aliens not eligible to citizenship under the laws of the United States "may acquire, possess, enjoy and transfer real property or any interest therein in this State in the manner and to the extent and for the purposes prescribed by any treaty now existing between the Government of the United States and the nation or country of which such alien is a citizen or subject." As this clause in express terms requires the recognition of any rights secured by existing treaty, it is not to be assumed that any right so secured would not be fully protected.

The Aide Memoire, however, appears to extend too far the theory that the ownership of property carries with it a vested right to dispose of such property in all the ways in which property may be transferred, by sale, by gift, by devise, or by descent, without future limitation or restriction. Such a theory would render it impossible for a country to alter its laws with regard to the transmission of property. So far as the Department is advised it has never been held that a right of ownership, vested either in a citizen or in an alien, would be impaired by a change in the law denying to any and all aliens the right to purchase lands. Such changes in the law



have not been infrequent either in the United States or elsewhere, and it is believed that they have not been held to impair vested rights. If such rights are not impaired by forbidding alienation or transmission to all aliens, they are obviously not impaired by the prohibition of alienation or transmission to particular classes of aliens. Attention may be in this relation be drawn to numerous treaties between the United States and other Powers by which it is provided that where, on the death of the owner, real estate in the territories of the one Power would descend upon a citizen of the other who is disqualified by alienage from taking, the latter shall be allowed a period, varying according to the stipulations of the treaties, to sell the land and withdraw the proceeds. These stipulations clearly recognize the fact that the right of ownership is not regarded as carrying with it an unlimited and unalterable right of disposition or descent.

The Aide Memoire, recurring to the "spirit and intent of the existing treaty rather than to its particular stipulations, maintains that the provisions of the California statute discriminates against Japanese subjects "in a matter in which, internationally speaking, aliens are usually placed on national or most favored nation footing." The Department regrets that it is unable to admit that the assumption here made is well founded. Without entering minutely into an examination of conventional stipulations, the Department desires to point out that the alien ownership of land has seldom been treated in the practice of the United States as a matter of most-favored-nation treatment. The most-

favored-nation clauses in the treaties of the United States have almost universally related to matters of commerce and navigation. In only a few cases, perhaps not more than two or three, has alien ownership been conceded by means of a most-favored-nation clause. With these exceptions the right of alien ownership has been secured only by special treaty stipulations, with the result that the citizens of countries not having such treaty with the United States were unable to enjoy the right of ownership.

In this relation the Aide Memoire quotes from Moore's Digest of International Law, Vol. 6, page 702, a summary to the effect that "a Mexican statute discriminating against citizens of the United States and other aliens in respect to the capacity to hold real estate in Mexico is in conflict with the treaty of 1831."

The Department desires to deal with the subject to which the foregoing summary relates, as it does with all other matters, with entire candor. The Aide Memoire correctly states that the treaty of 1831 contains no express provision on the subject of ownership of lands and that the most-favored-nation clause which it contains relates only to commerce and navigation and to certain other matters in which the holding of real estate is not included. Nevertheless, the Government of the United States then essayed to make the same argument which is now so strongly urged in behalf of the Imperial Government, but was in the end obliged practically to abandon it. The facts are as follows:

The remonstrance or protest of the United States related



to certain Mexican laws restricting the right of alien ownership of lands and particularly to the law of July 20, 1863, which contains the following Article:

> "2. Any inhabitant of the Republic has the right to denounce up to two thousand five hundred hectares, and no more, of public lands, with the exception of the natural born and naturalized citizens of nations adjoining the republic who, by no title whatever, can acquire public lands in the States bordering the said Nations."

That this Department on the occasion in question went the full length of the present Japanese contention is conclusively shown by the text of its instruction dated June 23, 1879, which reads as follows:

> "The discrimination in this respect between those citizens and other foreigners, is still believed to be invidious, unnecessary, at variance with the treaty and quite incompatible with those friendly relations which the obvious interest of both countries requires should be maintained between them. * * *
>
> "The Mexican law of 1863 is specially invidious toward citizens of our border States, because it practically discriminates against them by name, and thereby stigmatizes them as unworthy to have the privilege of holding real estate. This stigma can not be acquiesced in by this Government, which does not admit the right of any foreign power to discriminate between citizens of different States of this Union, who can only be known abroad as citizens of the United States. It may be that the treaty

of 1831 does not expressly confer upon citizens of the parties the right to hold real estate in their respective territories, nor does it provide for an equality of rights in that respect between Mexicans and our own citizens. Although the equality between citizens of the United States and other foreigners in Mexico is by the 2nd and 3rd Articles of the Treaty literally restricted to matters of commerce and navigation, it may also fairly be construed to include a like equality in the privilege of acquiring and holding real estate. It cannot be doubted that if the construction now claimed had been anticipated, it would have been thwarted by an explicit provision. There is believed to be no such discrimination against Mexican citizens in any law in this country. There may be at least one effect of the Mexican Act of 1863, which may have escaped the attention of that Government. Both the Treaty of Guadalupe Hidalgo and the Gadsen treaty, guarantee to those Mexican citizens in the ceded territories who might become citizens of the United States, their full rights of property in those territories. It is understood that many of those persons were owners of real estate in the border Mexican States. The effect of the law adverted to may be to confiscate that property while the title to that of those in Texas or elsewhere who were formerly Mexicans is guaranteed to them by Treaty. It is hoped, therefore, that the policy of the Mexican Government on this subject will be so changed as to free it from the serious objections which have been pointed out."



The position of the Mexican Government was set forth in a note of its Minister of Foreign Affairs to the Minister of the United States in Mexico, dated May 26, 1879, which reads as follows:

"Having informed the President of the Republic of the contents of this note, by his direction I have the honor to make the following reply:

"The right which a sovereign State has to concede or refuse to foreigners the privilege of acquiring real estate in its territory is indisputable and universally recognized, as well as to establish a limit to this right when it has been conceded. In the use of that right, in exercise of its sovereignty, Mexico has issued different laws upon the subject, among them that of the 11th of March 1842 which on permitting foreigners established and resident in the Republic to acquire and possess city and rural property in the territory, made exceptions of those departments adjoining or fronting other nations, determining that in these, foreigners could not acquire real estate without express permission from the government; and that of the 20th of July 1863, which prohibits native or naturalized citizens of the adjoining countries to acquire public lands in the States of the Republic bordering on those countries.

"Mexico, upon issuing these laws, has not infringed the stipulations of Art. 3rd of the treaty of 1831, nor has it violated the spirit which prevails in that convention, because nothing is established in them which should be

considered as contrary to the liberty, privileges and security guaranteed to North American citizens in order that they may go with their vessels and cargoes to any market, port or river of the Republic to which other foreigners are admitted, nor are said citizens prevented from renting houses and ware-houses for the purposes of their commerce, nor are they prevented from dealing in all kinds of products, manufactures and goods, nor are they obliged to pay higher duties, imposts or emoluments than are paid by the citizens of the most-favored nations, nor is there anything, in a word, conceded to the latter with respect to navigation and commerce which is denied to North American citizens.

"On the other hand, the equality of privileges, exemptions and rights with the most-favored nations, stipulated with the United States in Art. 3rd of the treaty of 1831 refers to navigation and commerce; but although it should extend to another subject (capitulo), that equality should be understood to be under circumstances also equal, and with reference to the acquisition of lands in the frontier States, it can not be sustained that the United States which adjoin Mexico are in the same condition as the nations of Europe or of South America, for instance.

"I should at the same time call the attention of Your Excellency to the exception contained in the law of July 20th, 1863, which is the most preemptory disposition referred to by the clause of the contract which gave rise



to this note, which should not be considered as referring exclusively to the citizens of the United States, as it also comprehends those of the neighboring Republic of Guatemala, having the same conditions of boundary with Mexico, hence there is not nor can there be any justifiable motive for the Government of the United States to consider the prohibition established by the aforesaid law as an exclusion injurious to its citizens, and which refers to the nations bordering on the Republic."

It was in reply to this exposition of the law by the Mexican Government, which had been called forth by previous representations on the part of the United States, that the instructions above quoted, of subsequent date, were sent. They were duly communicated to the Mexican Government. On August 20, 1879, the Minister of the United States in Mexico wrote to the Department as follows:

"On the 17th ultimo I communicated to the Mexican Foreign Office in a note of that date the substance of your dispatch No. 646, of June 23rd, relating to the prohibition to citizens of the United States from acquiring real estate and public lands in the Mexican border States.

"Up to this date I have received no acknowledgment of my note and I regard it as highly probable that no reply will be made thereto, neither have we any reason to expect that the policy of the Mexican Government on the subject will be changed, as a result of the protest you have directed me to make."

The forecast of the American Minister proved to be

correct and the remonstrance of June 23, 1879, remained unanswered. The law also remained unaltered.

The Aide Memoire expresses the belief that the present instance is the first one in which a Powers, being a party to a reciprocal commercial treaty guaranteeing most-favored-nation treatment "in all that concerns commerce and navigation," has ever been placed by the other contracting party at a disadvantage, as compared with non-treaty countries, "in matters which, in the treaty, are made the subject of reciprocal concession." This passage seems to blend two questions which are by no means interdependent. As is observed in the Department's note of the 16th instant, if the contracting parties have dealt with a certain subject by means of an express reciprocal agreement, it is hardly open to either party to assert that the adjustment thus made is not fair and equal, or that it is open to objection because it falls short of most-favored-nation treatment.

In the animadversions of the Aide Memoire upon discriminatory legislation the Department desires to express a general concurrence. It must, however, be admitted that discriminations of one kind and another very widely prevail, and that it is often necessary to deal with them in a tolerant spirit in order that greater causes of irritation may be avoided. Perhaps in no case is it more essential to take this moderate view than in that of the ownership of lands.

The Aide Memoire quotes a resolution of the House of Representatives of the United States on December 13, 1911, calling for the termination of the then existing commercial



treaty between the United States and Russia, because of the refusal of the Russian Government, as the resolution declared, to admit American Jews generally to that country. This resolution, it may be observed, was never communicated to the Russian Government and never assumed an international character. The passage quoted in the Aide Memoire does not appear in the resolution adopted by Congress; and notice was, as the Aide Memoire correctly states, given to Russia of the intention to terminate the treaty on the ground that it was "no longer fully responsive, in various respects, to the needs of the political and material relations of the two countries." The treaty was subsequently terminated, but, with this exception, the previous conditions continue and the discrimination complained of remains unchanged.

The Aide Memoire refers to the California statute as discriminating against Japanese subjects "in the matter of ownership of lands and houses." The distinctions on this subject have been pointed out in the Department's note of the 16th instant, in which the meaning and effect of the clauses of the existing treaty are fully set forth. It may be repeated that the statute contains no discrimination against Japanese as such, but applies equally to all aliens not eligible to citizenship.

The Department, following the example of the Aide Memoire, has forborne to enter into the discussion of the various and sometimes intricate questions affecting corporations as compared with individuals. These are questions peculiarly appropriate for judicial examination; for, while it

is held that a corporation is a "citizen" of, or has its "domicile" in, the State by which it was created, even though a majority of its stockholders may be citizens of other States or countries, yet these are matters more or less of legal regulations, and the rights, privileges and immunities of corporations are by no means coextensive in all matters with those of natural persons.

The Aide Memoire refers to a suggestion that the question of alien ownership of land in the several States of the United States is beyond the reach of the treaty-making power. The Department desires only to say that such a suggestion has not come from the Government of the United States. The Aide Memoire is correct in its statement that this subject has been dealt with by the treaty-making power, and that the provisions of the treaties on the subject have been upheld by the courts.

The Aide Memoire quotes from an instruction of this Department of March 5, 1875, in which the Secretary of State of the United States declared, in a case arising in Brazil, that the Imperial Government at Rio de Janeiro must be held accountable for any injury to the person or property of a citizen of the United States committed by the authorities of a Province. The Department is not disposed to question the correctness of this view, but would call attention to the fact that, in the instruction referred to, the statement was made that, as the Governors of the Provinces in Brazil were appointed by the Imperial Government, "the latter may be



regarded as specially responsible for their acts in all cases where the law of nations may have been infringed, *and justice may be unobtainable through the courts.*"

As is stated in Department's note of the 16th instant, the subjects of His Imperial Majesty will find in the courts of the United States, in the manner provided by the Constitution of the United States, full protection for all their legal rights, held under treaty or otherwise, and this Government will stand ready at all times through its proper officials to use its good offices to secure the prompt and efficacious determination of such suits. Such appears to be the proper and feasible course in the present matter in which questions of various kinds may arise, in respect of which it is scarcely possible to forecast the appropriate forms of action. The courts of the United States, as is well known, deal only with actual questions, with actual infractions of rights, and not with infractions merely mooted or apprehended.

The California School Case and the Horcon Ranch Case presented questions of a different order from those now under consideration. In the California School Case a single and actual treaty question, nor relating to a matter of property, had arisen, and was ready for adjudication. In the Horcon Ranch Case, a suit in equity was brought by the Government of the United States against an irrigation company for the purpose of preserving an international boundary to which the United States was directly a party. The United States is no doubt interested in the maintenance of all its treaties; but, as the numerous adjudicated cases cited in the Aide

Memoire clearly show, questions concerning private titles to land, whether such titles be assured by treaty or not, are adjudicated upon the suit of the parties in interest, without any interposition on the part of the Government of the United States.

Not only is this the practice, but it is greatly to the advantage of individual suitors that it is so. As Governments not infrequently differ in the interpretation of treaties, the private individual, if dependent for judicial protection upon the motion of the Government within whose jurisdiction he asserts that his treaty rights are denied, might be deprived of an effective remedy altogether, in case that Government should hold that the treaty was not violated. Moreover, the individual suitor, in presenting his arguments and allegations, is not restrained by the responsibility which necessarily attaches to the declarations and contentions of an immediate party to the international compact. His dependence upon the action of such a party would hamper his efforts and diminish the opportunity for redress.

For these reasons the judicial defense of private rights, and particularly of rights of private property, even where they may have vested under a treaty, is left to the suit of the individuals concerned. In the present instance, however, this Government has offered to go beyond the usual practice and to use its good offices to facilitate the progress of the judicial procedure, out of deference to the suspectibilities of a friendly



ower to whom this Government wishes ever to be bound by the closest ties of amity and respect.

Department of State,
Washington, July 16, 1913.

# 附屬書第四十五號　同上ニ關スル日本政府第三回抗議書

## TELEGRAM FROM BARON MAKINO, HIS IMPERIAL MAJESTY'S MINISTER FOR FOREIGN AFFAIRS, TO VISCOUNT CHINDA, RECEIVED AUGUST 23, 1913.

The two communications addressed to you by the Honorable the Secretary of State on the sixteenth of July last, in further discussion of the question of the recently enacted alien land law of California, have been received and carefully considered by the Imperial Government.

That Act, by depriving the Japanese subjects of the right of land ownership, while freely continuing the right, not only in favor of the subjects and citizens of all the other Powers with which the United States maintains reciprocal treaty relations, but in favor of many non-treaty aliens, has established a discrimination of the most marked and invidious character against Japan. The measure is, moreover, in the opinion of the Imperial Government, unjust and inequitable, and contrary to the letter and spirit of the Japanese-American Treaty, as well as at variance with the accepted precepts governing and regulating the intercourse of good neighborhood, and, being admittedly *ex industria* discriminatory against this Empire as compared with other States, it is also



mortifying to the nation and disregardful of the national susceptibilities of the Japanese people.

This is the gravamen of Japan's complaint. The notes of the Honorable W. J. Bryan contain remarks in explanation and extenuation of the action of California, but nothing, in the estimation of the Imperial Government, which answers fundamentally to that complaint, or which tends to shake their conviction regarding the main question. If, as is confidently believed, the existing Treaty between Japan and the United States has been violated, there is but one remedy, and the Imperial Government are unable to escape the conclusion, that the duty of applying that remedy devolves solely upon the Government of the United States, as the measure complained of has, despite the protest lodged by you, been permitted to go into operation.

The Imperial Government reserve for the present the further discussion of the question at issue. There are, however, some statements and conclusions advanced by Mr. Bryan which the Imperial Government feel it their duty forthwith to call in question. This instruction is designed to answer those observations.

I hasten, in the first place, to say that the Imperial Government do not for a moment imagine that the discrimination complained of was the outcome of a national policy. They regard, and have from the outset regarded, the action in question as of a local character. But, whatever causes may have been responsible for the measure, it cannot be denied that, in its final manifestation, it is clearly indicative of racial

antagonism. Nor, in the opinion of the Imperial Government, can any justification for such enactment be found in the assertion that it was "the emanation of economic conditions." It is the high office of modern treaties of commerce to prevent undue international discriminations, and the most favored nation principle, which finds a place in nearly all such compacts, has had the effect, in an international sense, of equalizing opportunities in all the various avenues of commercial and industrial life. It is true that special privileges are, in exceptional circumstances, sometimes granted by one nation in favor of another, but the present case stands out, it is believed, as the one single instance without historical parallel, in which a State maintaining, by treaty, the reciprocal most favored nation relations with another State, has ever, in a matter such as that under discussion, essayed to discriminate against such other State, as compared with third Powers with which no such relations exist. The action of Mexico in 1863, which was so strongly condemned by the United States, furnishes no such parallel, since the law in that case was, it appears based upon considerations of a geographic nature exclusively.

The Secretary of State denies the proposition advanced by you to the effect that the California statute discriminates against the Japanese subjects and that in the matter of land ownership, aliens are usually, internationally speaking, placed on national or most favored nation footing. In support of that denial, he cites the practice which prevails in the United States on the subject of alien land ownership, and he adds



"that the citizens of countries not having such treaty with the United States (*i.e. treaty granting, either expressly or by inference, under the most favored nation clause, the right of land ownership*) were unable to enjoy the right of ownership." This statement has naturally caused surprise to the Imperial Government, and they confess their inability to understand it. It not only conflicts directly with the California law in question and is irreconcilable with the statutes of many states of the Union by which the right of alien ownership is accorded independently of treaty stipulations, but it declares, in effect, that the discrimination complained of, which has been repeatedly recognized as a fact, is without foundation. In these circumstances, it is quite sufficient for the Imperial Government to repeat their contention that, by the California enactment, the Japanese subjects are denied the right of real estate ownership in localities in which that right is freely conceded to aliens belonging not only to the States which have no treaty engagements with the United States on the subject, but to the Powers which have no commercial treaties whatever with the United States.

Recurring to the subject of the Mexican incident, I desire to say that the Imperial Government are unable, upon the record in the case, to concur with Mr. Bryan in the view that the United States was, in the end, obliged practically to abandon its contention. Reading in natural sequence the correspondence exchanged between the United States and Mexico, the conviction is, it seems to me, irreprovable, that the quoted words of the Secretary of State on the occasion,

instead of being regarded as an argument, must be accepted as the deliberate conclusion of the American Government on the subject.

It is unnecessary, it seems to me, to follow Mr. Bryan in his remarks concerning the negotiations connected with the conclusion of the Treaty of 1911. It is sufficient to say that the reason, why no stipulation regarding land ownership was inserted in the Treaty, is because neither Contracting Party desired at that time such a stipulation, the United States equally with Japan. The assurance contained in Viscount Uchida's note of February 21, 1911, on the subject of liberal interpretation of the Japanese land law, was given at the instance of the United States, because of the condition of reciprocity contained in that law. The assurance was given, as stated in the note, "in return for the rights of land ownership which are granted to Japanese by the laws of the various states of the United States."

The laws of Japan on the subject of alien land tenure are not illiberal, but, in any case, they contain no provisions discriminating, in any manner whatever, against the citizens of the United States. On the contrary in all that relates to land ownership, as well as in the matter of all other civil rights, the American citizens, without distinctions and without conditions, are accorded in Japan full and complete most favored nation treatment, and there is no desire on the part of the Japanese administration to modify this state of things. What Japan claims is nothing more than fair and equal treatment.



The Secretary of State, it is observed, dwells at length upon the subject of labor immigration into the United States, and, in the same relation, he refers to the action of Japan in circumstances somewhat analogous to those existing in America. The reason or necessity for this exposition is not understood by the Imperial Government. The question of immigration has nothing whatever to do with the present controversy, and any reference to it only tends to obscure the real issue. This announcement I wish to make very categorical. More than four years ago, the Imperial Government willingly co-operated with the American Government in adopting suitable measures in regulation of labor movements from Japan to the United States. The steps thus taken were entirely efficacious, so that, during the past three years, considerably more Japanese laborers left the United States than have entered that country. The Government of the United States has recognized and frankly admitted the sufficiency of the measures enforced by the Imperial Government in the matter. The Japanese Ambassador to the United States, at the time of the conclusion of the Treaty of 1911, declared under the authority of his Government that the Imperial Government were fully prepared to maintain with equal effectiveness, the limitation and control which were then exerted in regulation of the emigration of laborers to the United States. Accordingly, in order to correct and finally dispel the popular error, I wish to say that there is no question whatever between Japan and the United States on the subject of the Japanese labor immigration into the

United States. The present controversy relates exclusively to the question of the treatment of the Japanese subjects, who are lawfully in the United States, or may hereafter lawfully become resident therein consistently with the existing regulations. So far as such subjects are concerned, the Imperial Government claim for them fair and equal treatment, and are unable either to acquiesce in the unjust and obnoxious discrimination complained of, or to regard the question as closed so long existing state of things is permitted to continue.

You are requested to explain the substance of this instruction to the Secretary of State and deliver a copy.

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# 附屬書第四十六號　日米協約ニ關スル珍田大使試案

## ARTICLE I.

In all that concerns the acquisition, enjoyment, disposition, transmission or inheritance of real property or any interest therein, it is mutually agreed that the subjects or citizens of the Contracting Parties shall, in the territories of the other, be placed on the same footing as those of the most favoured nation, and further that the companies, associations or corporations, of which the whole or a part of the members or stock-holders consist of the subjects or citizens of each of the Contracting Parties, shall likewise, in the territories of the other, be placed on the same footing as similar institutions, of which the whole or a part of the members or stock-holders consist of the subjects or citizens of the most favoured nation.

It is, however, understood that nothing contained in this Agreement shall be construed as affecting or superseding the existing laws of land tenure in the territories of either Contracting Parties, except as far as such laws operate prejudicially either to the actual holders of the right of or in respect of real property, lawfully acquired before the signature of the present Agreement, or to their heirs or successors in enjoying, disposing, transmitting or inheriting such rights.

ARTICLE II.

It is well understood that nothing contained in the preceding article shall be construed as affecting or superseding the laws now existing in either country in regulation of alien land tenure; provided however that in the matter of acquisition, enjoyment, transfer, transmission or inheritance of real property or any interest therein in the territories of each contracting party, lawfully vested, prior to the coming into force of the present agreement, in the subjects or citizens of the other party, or in the companies, associations or corporations of which the whole or a part of the members or stockholders consists of such subjects or citizens the most favoured nation treatment provided in Article I of this agreement shall in all cases be extended to the actual holders of said property rights or any of those upon whom such rights may subsequently devolve by transfer, transmission or inheritance.

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# 附屬書第四十七號　日米協約案ニ關スル外務大臣在本邦米國大使會談要領電報

IMPERIAL JAPANESE EMBASSY
WASHINGTON

TELEGRAM FROM THE MINISTER FOR FOREIGN AFFAIRS, TOKIO, RECEIVED AUGUST 19.

The American Ambassador called on the August 19, to discuss the question of the proposed Japanese-American Agreement respecting alien land tenure, copy of which had been forwarded to him for his confidential information.

I called his attention to the fact that the two nations had always placed special importance, in deeds as well as in words, upon the maintenance of their mutual relations of genuine friendship, and I remarked that no serious differences of political significance had ever marred the record of their long standing intercourse, until the questions of immigration and of land ownership came up for adjustment. Fortunately, the problem of immigration, it would be remembered, had been brought to a final and satisfactory conclusion a few years ago, and the only controversy now awaiting solution related to the subject of land ownership.

I refrained myself from discussion on those features of the California alien land law, to which the Imperial Govern-

ment felt bound to take exception, but I pointed out that the discrimination against Japanese subjects and the disregard of their vested interests, which the new legislation unmistakably implied, created a deplorable impression upon our people of all classes and political affiliations. Agitations on serious magnitude had broken out among certain quarters in Japan and, while every endeavor was being made to appease popular resentment, it would apparently be impossible, so long as the cause of grievances was left unremedied, to remove the sentiments of grave concern and dissatisfaction at the unfair treatment to which Japanese people were subjected in California.

I explained that in Japan, the days when statesmen of an exclusive class governed and controlled the foreign policy of the country independently of the trend of public opinion were fast disappearing, and the mass of the people now claimed to have a voice in the determination of the destiny of the nation. I declared that, being apprehensive of the untoward and unfavorable development of the situation, which might be brought about under the new order of things, the Imperial Government were sincerely bent upon every possible exertion, before it was too late, to find a suitable adjustment of the pending dispute, and to remove all causes of misunderstanding from their relations with the Government of the United States.

I then proceeded to say that the Japanese Ambassador at Washington, with that object in view, and, at the same time having regard to the position of the American Govern-



ment, formulated a project for the regulation of the question and informally submitted it to the Secretary of State for his consideration. I continued that upon receipt from you reports on your action thus taken subject to the approval of the Cabinet at Tokio, I had decided to accept your plan of adjustment, and had authorized you to present it to the American Administration as official proposals of the Imperial Government.

I embraced this opportunity to assure to Mr. Guthrie the profound appreciation, felt by the Government and people of Japan, of the friendly attitude shown by the President, in urging upon the Californian authorities, while the land bill was under discussion, the advisability of suppression, from that bill, of certain objectionable clauses, and in sending the Secretary of State to Sacramento to give counsel to the State Legislature. I added that those manifestations of good will on the part of the President created an excellent impression in Japan.

Finally, I expressed my earnest hope that the American Administration might find its way clear to accept the proposed Agreement, and to co-operate with the Imperial Government in the solution of the problem, which the high cause of international friendship seemed to demand.

The American Ambassador, in reply, dwelt at great length upon the momentous value which he attached to the relations of good accord and understanding between the two countries. He said that he had always watched with keen interest the furtherance of such relations, and that it was because of

his sincere solicitude to contribute towards that desirable end, that he had gladly accepted the responsible post of representing the United States in Japan. He was fully sensible of the importance of bringing to a satisfactory close the difficulties created by the recent legislation in California, and he expressed his personal concurrence in the draft Agreement proposed by the Japanese Government. He added that he would at once telegraph to his Government recommending favorable consideration of the Japanese proposals.

The interview was entirely cordial, and I was deeply impressed with the sincerity and earnestness which Mr. Guthrie displayed in dealing with the question.

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## 附屬書第四十八號　日米協約ニ關スル珍田大使修正私案

His Majesty the Emperor of Japan, and the President of the United States of America, animated by the common desire to secure and extend the friendly relations happily existing between Japan and the United States, have resolved to conclude a Convention for that purpose and have named as their Plenipotentiaires:

His Majesty the Emperor of Japan, .....

.....

and

The President of the United States of America, .....

.....

.....

Who, having exchanged their full Powers, found in due and proper form, have agreed to and signed the following Articles:

ARTICLE I.

In all that concern the acquisition, possession, enjoyment, disposition, transmission and inheritance of real property or any interest therein, the subjects or citizens of each of the Contracting Parties, shall, in the territories of the other, be placed on the same footing as subjects or citizens of the most favored nation.

ARTICLE II.

Companies, associations and corporations, of which the whole or part of the members or stockholders, consist of subjects or citizens of one of the Contracting Parties, shall likewise, in all that relates to the acquisition, possession, enjoyment and disposition of real property or any interest therein, be placed in the territories of the other, on the same footing as companies, associations and corporations of which the whole or part of the members of stockholders consist of subjects or citizens of the most favored nation.

ARTICLE III.

It is well understood, however, that nothing contained in the two preceding articles of this Convention, shall be held or construed as affecting or superseding the laws now in force in either country on the subject of alien land tenure; provided that in the matter of the acquisition, possession, enjoyment, disposition, transmission or inheritance of real property or any interest therein, in the territories of one Contracting Party, lawfully acquired and possessed by subjects or citizens of the other party, or by companies, associations or corporations of which the whole or part of the members or stockholders consist of subjects or citizens of such other Party, the treatment of the most favored nation, assured by Articles I and II, hereof, shall in all cases be extended and applied to and favor of the actual owners and holders of such real property or any interest therein, and



their heirs, devisees, and assignees, so long as such owners, holders, heirs, revisees and assignees, are or continue to be such subjects or citizens or such companies, associations or corporations as aforesaid.

ARTICLE IV.

The subjects or citizens of each of the Contracting Parties shall also enjoy in the territories of the other, the same rights, privileges and advantages as subjects or citizens of the most favored nation in whatever relates to the exercise of their industries, occupations and other legitimate pursuits.

ARTICLE V.

The present Convention shall come into effect ten days after the day upon which the ratifications are exchanged, and shall remain in force for ..... years after the date on which it takes effect or until the expiration of six months from the date on which either of the Contracting Parties shall have given notice to the other of its intention to terminate the Convention. In case neither of the Contracting Parties shall have given notice to the other six months before the expiration of the said period of ..... years, of the intention to terminate the present Convention, it shall remain in force until the expiration of six months from the day on which either of the Contracting Parties shall have given such notice.

ARTICLE VI.

The present Convention shall be duly ratified and the

ratifications thereof shall be exchanged at .....
as soon as possible and not later than .....
months from the present date.

In witness whereof, &c., &c., &c.,

Done at, .....

———



## 附屬書第四十九號　日米協約締結交渉打切ニ關スル在米大使宛外務大臣訓電

IMPERIAL JAPANESE EMBASSY
WASHINGTON

Among the more important pending questions that confronted me when I assumed charge of this Department, was the issue resulting from the enactment last year of the Legislature of California respecting alien real property ownership. The measure, as you are aware, undertook in effect to draw a distinction in the matter of such ownership between aliens belonging to different races. The avowed purpose of the law was, on the one hand, to annul the then existing right of ownership so far as Japanese subjects were concerned and, on the other, to continue the right in favor of aliens of the white and black races.

I have given the subject my most serious consideration and am consequently well satisfied that the enactment in question is not only in disregard of the letter and spirit of the existing treaty between Japan and the United States of America, but is essentially unfair and invidiously discriminatory against my countrymen and inconsistent as well with the sentiment of amity and good neighborhood which has always presided over the relations between the two countries. Nor

can I escape the conviction that the said enactment which was intended to have international effect is also in express of the authority of the State of California for the reason, that the separate States of the United States are, internationally speaking, wholly unknown and entirely without responsibility. In any case, the Imperial Government are confident that such action as complained of stands without historical parallel, and they are happy to believe that the legislation in question forms no part of the general policy of the Federal Government but is the outcome of unfortunate local conditions. I therefore fully concur in the views which you, in pursuance of instructions from my predecessor, presented to the Honorable the Secretary of State on the subject.

I also cordially appreciate the motives which in the interest of international conciliation and good-will induced Baron Makino to give favorable consideration to the idea of concluding a convention regarding the matter. But the project as it stands at the present time, instead of composing existing misunderstandings, would, I fear, tend to create new difficulties. Accordingly, you are instructed to inform Mr. Bryan that the Imperial Government are disinclined to continue the negotiations looking to the conclusion of a convention on the lines of the project which has been under discussion, but that they prefer to recur to the correspondences which were interrupted by the ineffective negotiations and that they will now look for an answer to the Note which you handed to Mr. Bryan on the 26th August last, hoping that



in a renewal of the study of the case a fundamental solution of the question at issue may happily be found.

The negotiations looking to an adjustment of the matter in dispute by means of a convention having failed, the advantage of still withholding from the public the correspondences that have passed between the two Governments on the subject is no longer apparent. You are consequently also instructed to announce to the Secretary of State that the Imperial Government desire to make public the correspondences in question, believing that fuller and more accurate information regarding the matter will contribute to the final settlement of the controversy.

You are authorized in carrying out the above instructions to hand a copy of this Note to Mr. Bryan.

# 附屬書第五十號　同上ニ對スル米國政府回答公文

Department of State
Washington

June 23, 1914.

Excellency:—

You were good enough to hand to me on the 10th instant a communication, which you had received from your Government, relative to the question resulting from the law enacted last year by the Legislative of California respecting alien land tenures in that State.

In the communication you were informed that the Imperial Government are disinclined to continue the negotiations looking to the conclusion of a convention on the lines of the project, which has been under discussion, but that they prefer to recur to the correspondences which were interrupted by these negotiations.

The Government of the United States, without discussing the advisability of the course pursued in withdrawing the project which had formed the basis of the pending negotiations, defers to the express desire of the Imperial Government to bring to an end the negotiations for a conventional settlement of the controversy.

The Imperial Government, in expressing its preference to recur to the correspondence which the negotiations interrupted, add that they will now look for an answer to the note which you handed to me on the 26th August last.



Your Excellency will recall that prior to the 26th August, you had submitted to me for consideration the project of a conventional agreement, which was, in the month of December following, superseded by another project, the one now withdrawn. Your note being delivered after the first project had been submitted, it was natural to conclude that it was intended only as a formal answer to my note and aide memoire of July 16, 1913, and not an answer upon which the Imperial Government relied to meet the arguments and contentions contained in my communications. A re-examination of your note confirms that conclusion in that little matter is introduced and no reasons are advanced which had not already been presented in Your Excellency's note of June 4, 1913. After a general summary of the grounds of complaint by your Government, you stated in the note of 26th August; "The Imperial Government reserve for the present the further discussion of the question at issue." But one inference, in view of the circumstances, is to be drawn from that statement. It is that, since negotiations had been instituted to settle the dispute by treaty stipulations, the Imperial Government did not think it opportune to traverse in detail the contentions urged in my note and aide memoire, but considered it sufficient for the time to restate their grounds of complaint and to advert to certain assertions in my aide memoire, which in their opinion tended to weaken those grounds.

In view of the desire now expressed by the Imperial

Government to reopen the study of the question and in view of the reservation made in Your Excellency's note of August 26, 1913, it is the opinion of this Government that the Imperial Government should submit a detailed answer to my note and aide memoire of July 16, 1913, in order that this Government may be fully advised as to those contentions and arguments advanced by it, to which the Imperial Government take exception.

In the reopening of the correspondence, which was interrupted last August by the submission by Your Excellency of the project for a conventional settlement of the dispute, the Government of the United States considers that its note and aide memoire of July 16, 1913, remain substantially unanswered, and it will, therefore, be pleased to receive such comments as the Imperial Government may desire to make upon the position of this Government as set forth in those documents, reciprocating the hope of the Imperial Government that in renewing the study of the case a solution of the question at issue may happily be found.

I cannot conclude this note without giving expression to the sincere regret, which I feel, that the Imperial Government should lay so much emphasis on the element of racial discrimination in this discussion. I desire, in behalf of my Government, to repeat the assurance, made in the previous correspondence, that the legislation, of which your Government complain, rests upon an economic basis, as does legislation of other countries, including your own, affecting Immigration and the ownership of land by aliens.



Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) W. J. Bryan.

His Excellency
Viscount Chinda,
Ambassador of Japan.

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# 附屬書第五十一號　加州土地法ニ關スル日本政府第四回抗議公文

IMPERIAL JAPANESE EMBASSY
WASHINGTON

November 25, 1914.

Sir:

The contents of your note under date of June 23rd last and relative to the question of the alien land tenure in the State of California have duly been communicated by me to the Imperial Government.

In that note you have been enough to inform that the United States Government concur in the proposition of the Imperial Government to terminate the negotiations looking to the conclusion of a convention on the lines of the project which has been under discussion. With regard, however, to the expectation of the Imperial Government to receive a reply to the note which I had the honor of delivering to you on August 26th, 1913, I understand that it is the opinion of the United States Government that your note and aide memoire of July 16th, 1913, remain, as yet, substantially unanswered, and that, therefore, a reply to the same should be forwarded by the Imperial Government so that you may be advised as to the contentions advanced in the documents, to which the Imperial Government take exception.



I may here mention that pending the aforesaid negotiations for the conclusion of a convention an immediate answer to my note of August 26th, 1913, may not have been regarded as essential by the Imperial Government, but now that the negotiations have been brought to a termination they deem it imperative that the question at issue may further be discussion to the end that a solution satisfactory to both parties may be reached at as early a date as possible.

Although, it is true, certain reservation has been made in the telegram of Baron Makino to me, transmitted to you on August 26th, 1913, I should consider that the attitude of the Imperial Government towards the statements contained in your note and aide memoire of July 16th, 1913, has been made substantially clear to the United States Government. In view, however, of the opinion expressed in your note of June 23rd last, I am now instructed by Baron Kato, Minister of State for Foreign Affairs, to reiterate the contentions of the Imperial Government and to bring to your notice more fully the following observations upon your recent communications.

In the opinion of the United States Government that the California Enactment is not indicative of a national discriminatory policy, the Imperial Government gladly concur, for they have at no time regarded the question in that light, as has been pointed out by Baron Makino in his telegram to me sent on August 23rd, 1913. At the same time, however, the incentive which prompted the measure and the circumstances which culminated in the legislation are of so

apparent a nature that there seems to be no denial of the fact that the enactment was an outcome of a local policy of discrimination against Japanese subjects qua Japanese subjects, and that it was a manifestation of racial antagonism. Although, no doubt, pains have not been spared to avoid a positive expression to that effect, this phase of the law is of an evident character, and the fact that the statute has been aimed at my countrymen is very thinly veiled and even is widely admitted. In this connection I may refer to the telegram which, I am informed, the President forwarded to the Governor of California on April 22nd, 1913, and which contains the following passage:

"If they (the people, the Governor and the legislature of California) deem it necessary to exclude all aliens who have not declared their intention to become citizens from the privileges of land ownership, they can do so along lines already followed in the laws of many of the other states and of many foreign countries, including Japan hereself. Invidious discrimination will inevitably draw in question the treaty obligations of the Government of the United States. I register my very earnest and respectful protest against discrimination in this case." Without expressing any views on the proposition contained in this message, one can clearly conceive the opinion of the President himself on the character of the legislation.

The Imperial Government are unable, likewise, to sympathize with the contention offered in extenuation of the statute that the act is the emanation of economic conditions.



The number of my compatriots, as well as the area of land, affected by the new law, is so very small that the actual facts appear to the Imperial Government neither to confirm the existence of such conditions nor to warrant the necessity for such legislation, in view, especially, of the fact that since the enforcement by the Imperial Government of their policy of regulating labor emigration to the United States the Japanese population in this country has shown a conspicuous decrease. Moreover, even granted that such conditions do actually exist in California, the same may undoubtedly be said of other nationalities finding home in that state, and the Imperial Government are still unable to associate themselves with the view that they constitute a just ground for such an invidious discrimination and the wholesale exclusion of Japanese landowners.

In this connection your recent note calls attention to the existence in Japan of the Imperial Ordinance No. 352 promulgated in 1899. The Imperial Government, however, fail to find any precise analogy between this Ordinance and the act of California. Under the Ordinance, as is provided by the article quoted in your note, the liberty of residence is extended to the subjects or citizens of the Powers, who are not entitled to that freedom by virtue of treaty. The purport of the law is to grant a privilege hitherto denied, not to rescind it; and the permission granted is general in its application, the prohibition being limited only to a specific case. Your note draws attention to the relation of this Ordinance to Chinese subjects in Japan. The position, how-

ever, of the latter under the existing treaty between Japan and China differs materially from that of Japanese subjects in this country under our present treaty, so that, in the absence of the Ordinance in question no Chinese subjects in Japan would have had any right to the freedom of residence as enjoyed by the subjects or citizens of other nations. The effect of the Ordinance was to extend to them this privilege and, therefore, in this respect the law is quite the reverse to that of the California statute which deprived Japanese subjects of rights hitherto possessed.

Commenting on the remark in my previous note on the present subject that the California statute is contrary to the letter and spirit of the treaty and is at variance with the accepted principles of just and equal treatment, your note declares that "while it is readily conceivable that a question of treaty right and a question of fair and equal treatment may co-exist, yet, if the matter under consideration has by the contracting parties been made the subject of an express adjustment and agreement, it is hardly open to either party thereafter to say the reciprocal measure of treatment which they have voluntarily concurred in establishing is not just and equal." With due respect to the principle professed by this assertion, you will permit me to state that at the time when the Treaty of 1911 was under negotiation between the two Governments such a situation as has been created by the California legislation was never anticipated, and no arrangement was made to meet the exigencies of the case, so that, we are now confronted with a question for



which there are no adequate provisions. It is true that every nation has her freedom of domestic legislation in matters that are not expressly stipulated in her treaties with other Powers. However, in the exercise of this right it is generally deemed necessary, where friendly nations are concerned, to practice moderation, so as to maintain the principle of mutual respect, to promote the relations of reciprocal interest and not to defeat the very aim and design of the treaty itself. With regard to the negotiations which terminated in the Treaty of 1911, and to the note of Viscount Uchida dated February 21st, 1911, referred to in your note, the adjustment of the alien land tenure has no doubt been left, with tacit mutual confidence, to the judicious consideration as well as the sense of equity of each contracting party. Although neither nation was then desirous of entering into a categorical treaty stipulation on this subject, the absence of such an agreement was certainly not intended to accord to either party an opportunity to enact laws, the effect of which would be incompatible with the aim and design of the treaty itself, Japan entirely relying in this respect upon the justice and impartiality of the United States. The aforesaid note of Viscount Uchida was given at the instance of the United States Government, and it is a source of disappointment to the Imperial Government now to find that the liberal terms of the assurance therein contained, instead of being appreciated, as it was desired, are being employed in extenuation of the California statute of which invidious discrimination is the principal feature. In offering the aforesaid assurance

to the United States Government, the Imperial Government were certainly aware of the existence in some states of the Union of the laws denying to all aliens the privilege of land ownership, but it was beyond the contemplation of the Government that the Japanese nation as such might be excluded from this privilege enjoyed by other Powers having with the United States treaty relations or otherwise.

With regard to the question of naturalization, fundamentally speaking it should no doubt be considered as a political problem which concerns each individual nation, but when, as in the present case, the question is employed as a means of enforcing a discriminatory measure practically directed against one particular nation it must necessarily assume an international aspect. Despite statements to the contrary, the formula adopted is clearly of Californian origin and in no other state of the Union is liberty to own land made to depend upon capacity to acquire American citizenship. Historically examined, as your note points out, there is no doubt whatever that no discrimination against the Japanese nation was ever intended either by the framers of the Constitution or by the authors of the subsequent amendments, and this very fact in itself should, it seems to me, dissuade the American legislators of the present time from availing themselves of the non-explicit terms of the laws for the purpose of inflicting a stigma upon a friendly nation.

It is a matter of satisfaction to the Imperial Government to learn that your Department conforms to the principle, as stated in my aide mémoire of June 4th, 1913, that where a



right is once vested by treaty or by any other law it remains preserved even if the treaty or law which created such a vested right should cease to exist.

Refuting, however, the contention in the aide mémoire that the ownership of property carries with it full right of alienation, your aide mémoire of July 16th, 1913, asserts that a vested right of ownership would not be impaired by a change in the law denying alienation to all aliens or to particular classes of aliens, and that my contention, if correct, would render it impossible for a country to alter its laws concerning the transmission of property. The soundness of this argument would seem to be dependent upon the justice of such an alteration in the law. A significant distinction must exist between the case where the change is general and where it is specific in its application. The stipulations in the treaties between the United States and other Powers, referred to in your aide mémoire, providing for the sale of land and the withdrawal of the proceeds would seem to apply to cases where the disqualification to succeed to real estate by reason of alienage is universal, affecting all foreigners alike. Instances may not be lacking where no impairment of a vested right of ownership may take place in consequence of a modification of the law concerning transmission, but the position of the case would be quite different where, as in the present instance, the prohibition is directed against a particular race or nation so as to abridge ex industria their right of ownership by taking away from it the liberty of alienation by reasonable methods known to law.

Your aide mémoire correctly asserts that only to a few nations the United States Government have conceded the most favored nation treatment in the matter of the alien ownership of land. At the same time, however, a concession even more generous in character than this treatment is accorded by the United States to the subjects or citizens of some other Powers; for by the treaties with these nations the United States offers to their subjects or citizens a similar treatment in this respect as accorded to her own citizens. Moreover, the laws of a majority of the states of the Union permit aliens to own real estate independently of treaty stipulations. The assertion, therefore, that the subjects or citizens of countries not having treaties with the United States containing a most favored nation clause or special stipulations on the subject of land tenure are excluded from the enjoyment of landownership, does not tally with the actual position of aliens in many states of the Union including California herself where, save the restriction under the new law, all aliens are permitted to own land even in the absence of any treaty stipulations whatsoever, as provided by Section 671 of the Civil Code of California which contains the following words: "Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this state."

In my aide mémoire I have referred to an instruction given by the Secretary of State to the American Minister in Mexico in 1879; to a resolution of the House of Representatives in 1911 calling for the termination of the Commercial



Treaty between the United States and Russia, and to an instruction given by the Department of State to the United States Minister in Brazil in 1875. Your aide mémoire favors me with full detail in explanation of the cases thus cited, and informs me that the remonstrances of the United States to the foreign Powers concerned, on the occasions in question, have not had the results as desired by the United States Government. Whilst appreciating the information which you have been good enough to accord me, I am of the opinion that further discussion on the various phases of these cases would neither be wise nor necessary. I will, therefore, content myself by stating that in citing the above mentioned cases my aide mémoire has merely essayed to point out that in questions of a more or less analogous nature the United States herself has held the same views and has maintained a similar attitude towards foreign Powers—a fact which, is confirmed by the information contained in your communication. No matter how the representations of the United States Government may have been received by the other nations concerned, whatever may have been the results of their remonstrances, the fact remains that the United States Government have always upheld their views and have maintained their attitude.

It is a matter of great regret to the Imperial Government that they are compelled to own their sense of disappointment to find in the communications so far received from the United States Government, little that appears to answer in a fundamental manner to the main complaint of the Imperial

Government, so as to shake their original convictions which dictated the present protest, namely, that the new California statute is invidiously discriminatory against the Japanese nation, that it is contrary to the letter, as well as spirit, of the existing treaty, and that it is incompatible with the sentiment of amity and friendship which has always characterized the intercourse between our two nations. The question at issue, although of a serious and far reaching nature, is not, in its essential aspect, of an intricate character, and the Imperial Government are satisfied that the case has been fully set forth in their notes to the United States Government, and they deem it unnecessary to elaborate their representations to a greater extent than they have already urged.

The Imperial Government appreciate the propitious offer of the United States Government that they would stand ready to compensate any Japanese subject whose property rights might have been impaired by the operation of the statute, and that in case any Japanese subject should institute a litigation in the courts of the United States for the defence of his rights the United States Government would tender their good offices to secure the prompt and efficacious determination of his suit. Unfortunately, however, the present question is one which affects the people of Japan, as a nation, so that, quite independently of the facilities and privileges which individual members of the Japanese community in California may enjoy, they must naturally look to the central administrative authorities of the two Governments for the adjustment of the question, as it concerns them in its inter-



national aspect. The Imperial Government are compelled to consider that the courses suggested by the United States Government would neither be adequate nor meet the exigencies of a case such as the present one, and they deem it their duty once again to assert their view that in questions of this nature the diplomatic channel is the only proper course through which a satisfactory solution of the controversy may fitly be attained. Whilst, therefore, the Imperial Government are aware of the existence, in the political system of the United States, of certain constitutional difficulties, they must look to the Federal Government of this country for the adjustment of the pending question, welcoming in this respect the denial in your aide mémoire of July 16th, 1913, of the suggestion that the question of alien ownership of land in the states is beyond the reach of the treaty making power.

In bringing to a termination the negotiations for the conclusion of a convention, the Imperial Government were actuated by the opinion that the project, as it then stood, would compose in no wise the existing misunderstandings. Our first mutual concern, it appears to the Imperial Government should be to ameliorate the present situation in California created by the unfortunate legislation, and then to guard against all possible future troubles of a similar nature. The task may not be a facile one, but the Imperial Government repose too much confidence in the integrity and judgment of the American Government to entertain any doubt that means of the solution of the question will be found. It is, therefore, the earnest hope of the Imperial Government

that a response to this note may be forthcoming in which the United States Government will express their concurrence with the views herein contained and will advocate a course which may have the effect of relieving the difficulties. Meanwhile the Imperial Government deem it to be a matter of grave importance that no efforts on their part as well as on that of the United States Government should be spared to meet the question with entire rectitude, and to prevent any possible future complications which might arise and result in perplexing the situation and aggravating the susceptibilities of the two nations.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) S. Chinda.

Honorable William Jennings Bryan,
Secretary of State.

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# 附屬書第五十二號　日米協約ニ關スル第二次珍田大使私案

His Majesty the Emperor of Japan and the President of the United States of America, animated by the common desire to secure and extend the friendly relations happily existing between the two nations, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries:

His Majesty the Emperor of Japan, .....
.....; and

The President of the United States of America, .....
.....;

Who, having exchanged their full powers, found in due and proper form, have agreed upon the following articles:

## ARTICLE I.

In all that concerns the acquisition, possession, enjoyment, disposition, transmission and inheritance of real property or any interest therein, the subjects or citizens of each of the Contracting Parties shall, in the territories of the other, be placed on the same footing as the subjects or citizens of the most favored nation.

## ARTICLE II.

Companies, associations or corporations, of which the

whole or part of the members of stockholders consists of the subjects or citizens of one of the Contracting Parties, shall likewise, in all that relates to the acquisition, possession, enjoyment and disposition of real property or any interest therein, be placed, in the territories of the other, on the same footing as companies, associations or corporations, of which the whole or part of the members or stockholders consists of the subjects or citizens of the most favored nation.

ARTICLE III.

It is well understood, however, that nothing contained in the two preceding Articles shall be held or construed as affecting or superseding the laws now in force in either country on the subject of alien land tenure; Provided that nothing in this or in the preceding Articles shall have the effect of cancelling or abridging any right or privilege which the subjects or citizens of one Contracting Party would have had in the territories of the other if this Convention had not been concluded: Provided further that the settlement of the question regarding Chapter 113, approved May 19, 1913, of the Statutes of the State of California, relating to alien land tenure, which forms a subject of diplomatic negotiations between the Governments of the Contracting Parties hereto, shall be sought independently of the present Convention, and that nothing contained in this Convention shall in any wise or manner affect such settlement.



ARTICLE IV.

The subjects or citizens of each of the Contracting Parties shall enjoy, in the territories of the other, the same rights, privileges and advantages as the subjects or citizens of the most favored nation in whatever relates to the exercise of their industries, occupations and other legitimate pursuits.

ARTICLE V.

The present Convention shall come into operation ten days after the exchange of the ratifications thereof, and shall remain in force for ..... years after the date on which it takes effect, or until the expiration of six months from the date on which either of the Contracting Parties shall have given notice to the other of its intention to terminate the Convention.

In case neither of the Contracting Parties shall have given notice to the other, six months before the expiration of the said period of ..... years, of its intention to terminate the present Convention, it shall continue operative until the expiration of six months from the date on which either Party shall have given such notice.

ARTICLE VI.

The present Convention shall be duly ratified, and the ratifications thereof shall be exchanged at ..... as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed this Convention in duplicate and have hereunto affixed their seals.

Done at Washington .....

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# 附屬書第六十三號　「ディリンガム」法案S.(383)及「バーネット」法案(H.R. 558)ニ關スル在米大使口上書

RE: DILLINGHAM BILL, S. 383, AND BURNETT BILL, H.R. 558.

S. 383:—

Sec. 3—page 6, line 24—page 7, line 4.

H.R. 558:—

Sec. 3—page 6, line 22—page 7, line 2.

(That the following classes of aliens shall be excluded from admission into the United States:) "persons who can not become eligible, under existing law, to become citizens of the United States by naturalization, unless otherwise provided for by existing treaties, conventions, or agreements as to passports, or by treaties, conventions, or agreements that may hereafter be entered into."

The wording of the exception clause underscored leaves room for mistaking the words "as to passports" as modifying not only the word "agreements", but the words "treaties" and "conventions" as well, and thus defeating the true purport of the clause, intended by the framers of the bill. That such fear is not wholly unwarranted will be made clear upon