

PROTOCOL No. 3.

MEETING OF 8TH FEBRUARY, 1882.

Present:

For Japan,

Mr. Inouye and Mr. Shioda;

For Austro-Hungary,

The Chevalier Hoffer von Hoffenfels;

For France,

Mr. Guillaume de Roquette;

For Germany and Switzerland,

Mr. von Eisendecker and as second delegate for Germany Mr. Zappe;

For Great Britain,

Sir Harry S. Parkes;

For Italy,

The Chevalier E. Martin Lanciarez;

For Holland, Sweden and Norway and for Denmark,

Mr. Van der Pot;

For Russia,

Mr. de Struve and Baron Rosen;

For Spain,

The Chevalier Doñ Luis del Castillo y Trigueros.

Protocol No. 2 was read and signed.

The Russian Minister begged to announce that his August Sovereign having appointed him to another post, he was obliged shortly to leave Japan, and to his great regret it had therefore become impossible for him to take part in the labours of the Conference. Baron Rosen would henceforth alone have the honour of representing the Imperial Government at the Conference. He took advantage of the present occasion to offer to the President and other members of the Conference his thanks for the kind attentions which they had manifested towards him, and to express the hope that the labours of the Conference might be crowned with complete success.

Mr. Inouye in his own name and that of the Delegates, expressed their regret at the necessity which deprived them henceforth of Mr. de Struve's assistance at their deliberations. He begged to offer to Baron Rosen a cordial welcome on behalf of those present.

The President then communicated a letter from the Italian Chargé d'Affaires, dated the 8th February, in which the latter informed him that the Government of

His Majesty the King of Italy had instructed him to take part in the present negotiations.

Mr. Inouye communicated further observations on the subject of "Consular Privileges," in continuation and explanation of the proposals made by him on this head at the previous meeting.

Firstly, he sees no objection to the appointment of merchant-consuls, provided always that they are not charged with judicial powers. At the same time there appears to him to be no necessity for such merchant-consuls possessing the right of freely travelling in the interior.

Secondly, the appointment of all Consuls-general, Consuls and Vice-Consuls, whether *de carrière* or otherwise, should be communicated by the Diplomatic Representative of the Power concerned to the Minister for Foreign Affairs, who would then deliver the *exequatur*. Consuls-general, Consuls and Vice-Consuls having jurisdiction and being *de carrière* might be free to travel in the interior, and any such officer taking advantage of this privilege to engage in trade, would thereby forfeit his *exequatur*. Any Consul-general, Consul or Vice-Consul quitting his post without the authority of his Government and taking up his residence in another port should lose the prerogatives of his official position, and his *exequatur* should be withdrawn.

Thirdly, that all provisional appointments should be officially communicated to the Minister for Foreign Affairs by the Diplomatic Representative of the Power concerned. In cases of emergency however a Consul might nominate a substitute, and such nomination would be recognized by the local Japanese Authorities for the period of one month so as to admit of its being reported to and approved by the Diplomatic Representative of the Power concerned and the Japanese Minister for Foreign Affairs. Failing such approval within the period named, the substitute so nominated would cease to be recognized by the Japanese local authorities.

Sir Harry Parkes proposed that the right to travel freely in the interior should extend to all consular officers *de carrière*, that is to all consular officers of a regular service holding appointments directly from their Government.

Monsieur de Roquette added that it is evidently understood that all members of the Legations should be entitled to the same privilege.

The Delegates of Austro-Hungary, France, Germany, Great Britain, Italy, Russia and Spain expressed their approval of the proposals of the President, who also accepted those of the Ministers of Great Britain and France.

The Netherlands Minister read the following memorandum giving his reasons for dissenting from the general opinion:—

"The Governments which I have the honour to represent at this Conference have appointed merchant-consuls in Japan, and I beg leave in consequence to make a few observations with regard to the proposals of His Excellency the Minister for Foreign Affairs as to merchant-consuls, which proposals are:

1. That merchant consuls-general should not enjoy any privileges not possessed by other merchants with regard to travelling in the interior.

2. That merchant-consuls, when about to absent themselves from their place of residence should have, in case of need only, the power to appoint substitutes on

their own authority for the term of one month, within which period the nomination should be officially confirmed by the diplomatic representative of the Power concerned and duly notified to the Foreign Department.

"In order to prevent possible complications I am prepared to admit that merchant-consuls or Consuls-general should, with regard to travelling in the interior, only enjoy the same privileges as the Japanese Government will feel disposed to extend to other foreign merchants, except when the exercise of their consular functions should imperatively require such journeys, in which case there need not be any fear of their infringing the treaties.

"As a rule, the merchant-consul when leaving his place of residence for any length of time, submits the appointment of his representative to his Minister for approval, and only when such approval has been obtained would the Consul be allowed to transfer the Consulate *ad interim*; at least such is the practice in the consulates of the Netherlands and Sweden and Norway, which are identical. The proposals His Excellency makes with regard to this point I shall be happy to bring to the notice of the Governments I represent, and I do not doubt that a satisfactory arrangement will be easily arrived at.

"His Excellency raises the objection that a merchant-consul might possibly not be entirely impartial in dealing judicially with commercial matters, to which I would reply that the plaintiff in any of the Dutch or Swedish-Norwegian Consular Courts in Japan can take exception against any judicial officer sitting in those courts, if such officer should be personally more or less interested in the matter at issue. Moreover, the Consul can only judge as *unicus judex* and without appeal a case not exceeding thirty dollars. In hearing claims above that amount he would be assisted by two assessors, who with the consul constitute a Consular Court, and the verdict of such court can be submitted to abrogation for claims not exceeding two hundred and forty dollars, and to appeal if the claims should exceed that amount.

"A merchant-consul for the Netherlands and Sweden and Norway cannot possibly be a judge of his own case. His assessors, who are appointed by the Minister for the term of one year, have to make oath that they will discharge the duties entrusted to them, faithfully and in accordance with the laws, and act as true and honourable judicial officers. Any claim against a merchant-consul would be heard by such assessor or assessors as the minister might specially appoint for the purpose, and the Consul would be nothing more than defendant. I have myself, whilst assessor of the Consular court at Yokohama, been appointed by the then Minister to preside over the Court in the matter of claims against the Consul. In ports where no consular court is established, a claim against a merchant-consul would by common consent be heard by the Consul of another Power, as was the case last year at Hakodate, when a claim against the merchant-consul for Denmark was heard before H. B. M. Consul there.

"I make these observations in order to confirm my assertion that in general justice is not imperilled in courts presided over by a merchant-consul, but if the Imperial Government has reason to complain of the administration of justice in any particular court, I shall feel obliged by His Excellency informing me of the details

of the matter alluded to. The case or cases to which His Excellency refers, in which justice could not be obtained because the defendant was a merchant-consul, should, I think, be fully investigated, for if such case had been brought in due form before the proper consular authorities (which I may be permitted to doubt), the facts would show such a gross abuse of position that the Imperial Government would no doubt find the Representative of the Power concerned perfectly willing and ready to assist in obtaining redress, the more so as the treaties were certainly never intended to allow such proceedings. The cases referred to can however only be exceptions to the rule, and should not be held to necessitate objections to the principle. With regard to ability and knowledge of law I beg leave to suggest that when the governments of Treaty Powers think it advisable to entrust the administration of law and justice over their own subjects to any merchant-consul, some substantial proof of incapacity should be furnished, if there be any intent to question the professional qualifications of such duly appointed merchant-consuls.

"In conclusion I beg to state that the Government of His Majesty the King of the Netherlands have informed me that they wish to maintain merchant-consuls, but contemplate reserving jurisdiction to Consuls *de carrière*. In what manner this will be arranged, I am not yet in a position to state, as the information reached me by telegraph, but I would suggest that it sufficiently shows the readiness of my Government to meet the views expressed by the Imperial Government, and may induce the latter to leave the matter of jurisdiction of merchant-consuls entirely in the hands of the powers concerned, as they after all are more interested in the matter than any foreign Government could possibly be."

Mr. Inouye undertook to consider the observations communicated by the Netherlands Minister, and to reply on a future occasion.

On the recommendation of Mr. Inouye it was agreed to pass on at once to Group II, "Civil Jurisdiction." In order to discuss this question effectively, especially with respect to headings 3 and 5 (absence of Competent Courts and absence of accessible Courts of Appeal) the President observed that it would be a great convenience to him to be made acquainted with the exact nature and extent of the administrative and judicial powers exercised by the Consular Courts of the different Powers, and he begged the Representatives to furnish him as far as possible with full particulars as to those powers.

This proposal was accepted.

With regard to heading No. 1 (Cost and Court fees) the President wished to explain that in making use of that heading he referred to a part of the general rules of judicial procedure. He proposes therefore to have it admitted as a principle that a foreign suitor in a Japanese Court should be bound to observe the rules of that Court without exception, in the same way that a Japanese suitor has to submit to the rules of a foreign court.

Sir Harry Parkes observed that it was obvious that a suitor in any court, whether foreign or Japanese must be governed by the rules of procedure of that court. As to fees and costs, he stated the practice observed in the British Consular Courts. A Japanese suitor entering a plaint in one of those courts through the medium of his own authorities pays no court fees, and only in exceptional cases is

required to give security for costs. But if he enters the court direct or employs counsel, he pays the same court fees and costs as any other suitor.

After some further discussion the Representatives of the Treaty Powers unanimously declared their adhesion to the principle proposed by the President.

The meeting separated at six o'clock.