

**Present:**

Mr. Inouye and Mr. Shioda, the Chevalier Hoffer von Hoffenfels, Mr. Guillaume de Roquette, Mr. von Eisendecker and Mr. Zappe, Sir Harry S. Parkes, the Chevalier E. Martin Lanciarez, Mr. van der Pot, Baron Rosen and the Chevalier Don Luis del Castillo y Trigueros.

The consideration of Group II, "Civil Jurisdiction", was continued.

The President observed that the second heading of this Group, namely "Partnerships between Japanese and Foreigners" was so closely connected with the subject of the conditions under which foreigners had the right of residence in Japan (Group V) that it would be difficult to discuss it separately. He would recommend that the question of jurisdiction in such cases should be postponed until the topic of mixed partnerships had been considered in connexion with Group V.

This suggestion was unanimously adopted.

With regard to the 3rd heading, "Absence of Competent Courts," Mr. Inouye said he would today limit himself to the discussion of general principles. He begged to point out that the Consular courts of some Treaty Powers possessed only a limited jurisdiction in civil matters. It seemed to him desirable that the Treaty Powers should extend the judicial authority of their consular courts in Japan, so as to qualify these courts to hear in future all civil cases as Courts of First Instance. It was not necessary, he thought, that there should be Consular Courts having unlimited civil jurisdiction at every port; it would be practically sufficient if there were courts qualified to try minor cases at each port, and one Court, say at Yokohama, competent to deal with all civil cases irrespective of amount. The expense of transporting witnesses would thus be avoided in minor cases, while in important cases this inconvenience would be less felt, considering the amount of the interests involved.

The suggestions of the President were unanimously assented to.

Sir Harry Parkes observed that he believed the Japanese Government were at this time engaged in the construction of a code of commercial law. This law, which would doubtless include such subjects as Contracts and Bankruptcy, had an obvious and most important bearing on the commercial transactions of Foreigners with Japanese. Until informed of the scope and character of the new commercial code he thought it would be premature for him to invite the attention of the Conference to the consideration of those subjects in their relation to foreigners, but he begged that note might be taken of his desire to do so at a convenient opportunity.

With respect to the 5th heading, "Absence of accessible Courts of Appeal," Mr. Inouye expressed the wish that Courts of Appeal might be established within a short distance of, and as far possible in, Japan. While recognizing fully the difficulties which might be experienced by some Powers in giving effect to this proposal, he submitted that its adoption would be highly advantageous.

Mr. Zappe agreed with the President that Courts of Appeal should be of easy access, but was of opinion that the present German system worked satisfactorily. He observed that "Appeals from the German Consular Courts are made to the

Supreme Court at Leipzig in the last instance, and the time within which judgment is given is according to past experience about nine months, or at all events has not exceeded one year. Appeals to the Superior Japanese Courts usually take the same time, if not more. The formalities to be observed in German Courts in cases of appeal are very simple, and every assistance is given by the Consular Authorities to enable the Appellant to be duly represented by Counsel. The expense of employing counsel is much less than that incurred in the employment of counsel in the local courts of Yokohama. During the last ten years the number of civil cases decided in the German Consular Court at Yokohama amounted to three hundred and forty seven, in fifty six of which the plaintiffs were Japanese. Appeals were made in nine cases, only one of which was at the instance of a Japanese plaintiff."

It was agreed that the Delegates would represent to their Governments the views placed before them by the Minister for Foreign Affairs on the subject of Courts of Appeal.

In introducing the question of the compulsory attendance of witnesses (4<sup>th</sup> heading) Mr. Inouye remarked that it was a subject demanding serious consideration. At present, with one or two exceptions, no consular authorities had power to compel their countrymen to give evidence in courts other than those of their own nationality. Great inconvenience and expense in the conduct of cases was frequently incurred in consequence. He thought that all consular courts should have power, which they would exercise as a matter of comity, to compel their countrymen to attend and give evidence in a Japanese court or in the consular court of another nationality. They should also, on the other hand, be empowered to order the payment of travelling expenses and compensation for loss of time to witnesses compelled to appear therein, such payments to be of course regulated by the rules of the Court in which the witness appeared. If the Treaty Powers would undertake to make such provision, the Japanese Government on its side would be prepared to take the necessary measures towards the same end.

Sir Harry Parkes remarked that British subjects could be compelled (by provisions of Order in Council) to attend as witnesses in a Japanese court or in any foreign court in Japan.

Mr. Zappe observed that at present only British Courts had the power of enforcing the attendance of their countrymen as witnesses before Japanese courts or the consular courts of Foreign Powers. Japanese courts on the other hand, when requested, had, in his experience, always enforced the attendance of Japanese subjects as witnesses. He knew of cases where witnesses had refused to appear in other courts than those of their own nationality, and he had no doubt that the expenses of civil suits had often been needlessly increased in consequence, while in criminal cases the course of justice had been impeded. In his view, therefore, reciprocal provision for the compulsory attendance of witnesses was very desirable, it being understood that refractory witnesses or witnesses guilty of contempt of court should be liable to punishment by their own court in accordance with the law applicable to such offences.

The Delegates unanimously concurred in the principle of the President's proposal.

In concluding the discussion under the group (II., Civil Jurisdiction) Mr. Zappe drew attention to the desirability of putting into more practical form and more in unison with European principles the Tariff of fees and costs now in force in Japanese Courts.

The President replied that this subject should receive consideration and that copies of the Tariff should be furnished to the Foreign Representatives. He believed that the fees and costs in Japanese Courts were lower than those in foreign courts.

The following order of subjects to be discussed at the ensuing meeting was then agreed to:

Group III, Criminal Jurisdiction, divided into six headings.

1. Direct application to foreign Courts.
2. Right of arrest.
3. Right of police to enter houses.
4. Absence of competent courts.
5. Compulsory attendance of witnesses.
6. Absence of accessible courts of appeal.

The meeting was adjourned at a quarter to six.

## PROTOCOL No. 4.

MEETING OF 16<sup>TH</sup> FEBRUARY, 1882.

The Conference assembled at 2 P. M.

Present:

For Japan,

Mr. Inouye Kaoru and Mr. Shioda Saburo;

For Austro-Hungary,

The Chevalier Hoffer von Hoffenfels;

For Belgium,

Mr. Scribe;

For France,

Mr. Guillaume de Roquette;

For Germany and the Swiss Confederation,

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 the Netherlands, for Sweden and Norway, and for Denmark,

Mr. van der Pot;

For Russia,

Baron Rosen;

For Spain,

The Chevalier Don Luis del Castillo y Trigueros.

The President announced that he had received a telegram from the Belgian Government, informing him that Mr. Scribe had been appointed Charge' d'Affaires *ad interim* for Belgium, and in that capacity was instructed to represent that Power at the Conference. The President had therefore invited him to take his place among the Delegates of the European Treaty Powers.

A letter to the same effect from Mr. Scribe to the Minister for Foreign Affairs was read.

Copies of the above letter and telegram are annexed to this protocol.

Sir Harry Parkes on the part of the Diplomatic Body welcomed Mr. Scribe as a member of the Conference.

Protocol No. 3 was then read and signed.

Mr. Inouye desired to make the following observations upon the memorandum read by the Minister of Holland at the meeting of the 8th February, inserted in Protocol No. 3.