

the Favoured Nation Clause and the Coasting Trade should be further considered.

The President also invited the Foreign Delegates to bring forward at that sitting any matters which they wished to submit to the notice of the Conference.

The Conference adjourned at four o'clock.

PROTOCOL No. 13.

MEETING OF JUNE 15, 1882.

Present:

- For Japan,
Mr. Inouye and Mr. Shioda;
- For Austria-Hungary,
The Chevalier Hoffer von Hoffenfels;
- For Belgium,
Mr. C. de Groote;
- For France,
Mr. Tony Conte;
- 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 Lanciarezi;
- For the Netherlands, for Sweden and Norway and for Denmark,
Mr. van der Pot;
- For Portugal,
Dom Joaquim Jose da Graça;
- For Russia,
Baron Rosen;
- For Spain,
The Chevalier Don Luis del Castillo y Trigueros;
- For the United States,
The Honourable John A. Bingham.

Protocols Nos. 11 and 12 were signed.

Sir Harry Parkes begged to ask the President whether he would kindly furnish him with a copy of the Administrative Notifications spoken of in the Annexe to the Protocol, as being compiled in a form which rendered them easily accessible to the Courts and private individuals.

The President replied that he would be happy to supply Sir Harry Parkes with a copy of the Administrative Notifications. They were in Japanese and had not yet been translated.

The President observed that at the last meeting he had been invited to submit a draft of the Most Favoured Nation Clause. He had framed a draft, which he now begged to present, reserving to himself the right of making verbal alterations in case his meaning should appear not to be expressed with sufficient clearness. As it stood, however, it represented his views on the subject.

The following is the draft of the new "Favoured Nation Clause" presented by the President.

"It is agreed that any favour, privilege or immunity whatever in matters of commerce or navigation which either Contracting Party has actually granted or may hereafter grant to the subjects or citizens of any other State, shall be extended in identical cases and circumstances to the subjects of the other Contracting Party, gratuitously, if the concession in favour of that other State shall have been gratuitous, or in return for a compensation as nearly as possible of equal value and effect to be adjusted by mutual agreement, if the concession shall have been conditional."

Mr. van der Pot remarked that he entirely agreed with the proposed wording of the Clause.

Sir Harry Parkes observed that as far as he could judge on hearing the clause read, he thought his Government, to whom he would submit it, were not likely to object to its terms. It would remain for them to consider whether the advantages which the Japanese Government would gain from Great Britain under such a clause bore a fair proportion to those which they granted to British subjects.

The Austro-Hungarian Minister declared that he would likewise submit to his Government the proposal made by the Minister for Foreign Affairs, with all the reservations however that the Imperial and Royal Government might find itself obliged to make in virtue of Treaties existing between the Austro-Hungarian Monarchy and other countries.

The French Chargé d'Affaires expressed his adherence to the declaration of the Austro-Hungarian Delegate; and made the same reservations as concerned Treaties between France and other countries.

The other Delegates declared their readiness to submit the President's proposed draft to their Government.

The President then observed that according to the order of the day the continuation of the discussion regarding the Coasting Trade should now be proceeded with. Before however entering further on that subject, he wished to make a few remarks in regard to the Tariff. The delegates were good enough to state at the sitting of 11th May, that they would recommend to their Governments the adoption of the Tariff as presented in their counter-proposal and accepted by himself and his colleague on the part of Japan. As the Conference was now approaching its termination, having dealt with nearly all the groups into which the subjects to be considered were divided, he desired to propose that the Tariff question should first be settled as early as possible, as being separate from the other questions contained in the general scheme, so as to come into operation at latest in the earlier part of next year. He had thought it very desirable to press this question upon their earnest consideration, and begged to remind them of the fact that the sooner the depreciation of the paper currency was remedied by replacing it

with specie, the better it would be for both foreign and domestic commerce, as he had already explained at length in his statement at the sitting of the 16th March.

Sir Harry Parkes enquired what were the subjects included by the President under the term questions contained in the general scheme.

The President replied that he meant the subjects named in his statement which appeared in the protocol (No. 11) of the meeting of the 1st instant.

The French Chargé d'Affaires remarked that it was impossible for him to reply to the President's proposal. He could only submit it to his Government, and at the same time he would ask if the President intended by his proposition that the Tariff should be separated from the Commercial Treaty? He thought that the Tariff formed an integral part of the Treaty as a whole, and could not be separated from it.

The German Minister observed that he would be prepared to recommend to his Government the President's proposition as to the Tariff coming into operation at the time named by the President, if it were accompanied by an agreement upon other commercial subjects such as Drawbacks, Customhouse and Harbour Regulations, Coasting Trade, etcetera.

Sir Harry Parkes thought that it would be impossible to give the commercial world sufficient notice of the change of Tariff by the time named. The Tariff had yet to be completed, to be submitted to the Governments for approval, and to be formally agreed to. That agreement he presumed would have to be recorded in the form of a Treaty or Convention, and he submitted that such a Convention should include besides the Tariff the understanding to be arrived at on the various other commercial questions the Delegates were engaged in considering, such as Light Dues, Drawbacks, Bonded Warehouses, Customs and Harbour Regulations, etcetera, and which were all more or less connected with the subject of the Tariff.

The President observed that he would now proceed to give his views on the Coasting Trade question, and that he would then beg the Delegates to take his proposal relative to the Tariff into consideration and to give them their opinion at a subsequent meeting.

The President accordingly observed that, turning now to the subject of the Coasting Trade, he would simply remark that at present the demand for means of transport was to a certain extent satisfied by native companies, at least so it appeared to him, while further competition was about to be offered by a sailing-vessel Company in addition. He was, however, of opinion that notwithstanding the existence of these companies, the creation of additional facilities for transport by water should be allowed, so as further to stimulate competition, thus assuring to the public the benefits of cheap transport, and thereby increasing the movement of both internal and foreign commerce. With these views and especially at present, while the system of transport might yet be considered to be in its infancy, the attention of the Japanese Government ought naturally to be turned towards the advisability of having recourse to the employment of foreign vessels by Japanese subjects in the coasting trade, as an effectual remedy for the insufficiency of their transport system. He would add, however, that foreign vessels thus chartered by Japanese subjects ought

to be subjected to Japanese laws and regulations to be hereafter defined, and in case of infraction thereof should be amenable to the territorial courts, subject always to further arrangements, as this question was closely connected with the general plan he had already laid before the Delegates. If these conditions were considered by them to be acceptable, the Japanese Government would be ready to grant this privilege for the term of five years from the date of the new Tariff coming into operation. He trusted that in this way the desire conveyed to the Japanese Government through the medium of the communication to which he had already alluded might be fulfilled to the satisfaction of those members of the foreign community who presented it, while the present insufficiency, if any, of the coasting transport might be to a great extent remedied, to the benefit of the general public, both foreign and native.

Sir Harry Parkes said that he would consider the President's proposal, but that it would be difficult to give an opinion upon it until the laws and regulations to which it was proposed to subject foreign vessels engaged in the coasting trade were defined. As far as he could at present judge, he feared that the jurisdiction conditions attached to the proposal would render it at present impracticable.

The German Minister thought that he could recommend to his government the proposal as far as the subjection of foreign vessels employed in the coasting trade to the Japanese laws and regulations was concerned, but the application of these laws and regulations by the Japanese courts touched the question of jurisdiction, which he understood it was now proposed to separate from the arrangement with regard to the Tariff. He would suggest the abandonment of this part of the President's proposal, and that the enforcement of the Japanese law should be left to the Consular Courts.

The President replied that he would take the point raised by the German Minister into consideration. It appeared to him to be a very reasonable objection.

The President then invited the Foreign Delegates to mention any subjects which they desired to bring to the notice of the Conference.

The French Chargé d'Affaires desired to call the attention of the Conference to the advisability of introducing into the new Treaties, either as a general or as a special clause, such arrangements as might appear suitable for the regulation, in accordance with the law generally in force in Europe, of questions relative to literary and artistic copyright, patents, and the protection of trade marks.

The British, German, Austro-Hungarian and Italian Delegates supported the observations of the French Delegate.

Sir Harry Parkes remarked that the need of a Japanese patent law which would protect British and other foreign patents from infringement by Japanese subjects had long been felt in Japan. The imitation of foreign registered trade marks by Japanese was a common practice, but one that proved very injurious to the foreigners whose trade marks were counterfeited, and he submitted that it should be stopped by the imposition of fitting penalties.

The President replied that he would take this into consideration, and thought the question was one requiring a special arrangement on the basis of reciprocity.

Sir Harry Parkes also observed that Group V "Land Tenure and Conditions of

Residence at the Open Ports" had not been considered by the Conference, except in a passing way in the statement made by the President on the 1st inst. (Protocol No 11). The administrative system of Yokohama was known to be very defective, and the insecurity of property, the bad drainage and the serious unhealthiness thereby occasioned, as proved by the existing epidemic, were the subject of frequent complaint. Could not a remedy be found for this in allowing the foreign residents to have some voice in the municipal administration of the foreign settlement? The continuation of the present state of things was perilous to the public health, and called for immediate improvement.

He also wished to state in reference to the port of Niigata, that, although by the 7th article of the Arrangements for the settlement of Foreigners at that port made in 1867, it was provided that foreigners might freely hire houses and lease land for their lawful requirements, these conditions had not been fulfilled, and no British subject had yet been able to obtain land at that port, while great difficulty had also been experienced in hiring houses, owing to the impracticable conditions which the local authorities, and not the native owners of the property, sought to attach to the leases. He submitted that foreigners residing at that port should have similar facilities for obtaining land as were granted at the other ports.

He further wished to point out that he had received complaints of the great delay which occurred in the Japanese courts in suits between foreigners and Japanese, and of the injury resulting to foreign suitors in consequence of the Japanese defendants being allowed to stay execution by appeal, even in cases of simple action for debt, to which no valid defence was offered, say on an overdue promissory note, without giving security for the satisfaction of the judgment of the lower court in case the ultimate decision were against the appellant. Also that similar inconveniences resulted from the bankruptcy law of Japan, in that it admitted of no procedure by which a debtor who was insolvent, or who had committed an act of bankruptcy, could be forced by summary process to account to his creditors for their property in his hands. The consequence was that, although known to be insolvent, he was free to dispose or make away with the property of his creditors and his own until final judgment for debt was obtained against him in the courts after a succession of appeals. In bankruptcy cases foreigners were placed at a great disadvantage, as they had at present no voice in the realization or disposal of the estate of a bankrupt Japanese. The points he had raised were important because they affected commercial confidence, and it was as greatly in the interest of Japan as in that of foreigners, that these causes of complaint should be removed.

The President replied that he had listened with much interest to Sir Harry Parkes' remarks, and begged to observe that the principles upon which foreigners would be admitted to hold land in Japan were already included in the proposals laid by him before the Foreign Delegates on the 1st June, and he did not think that much difficulty would arise when those principles should have been agreed to. If in the meantime there existed any special instances in which causes of complaint were thought to have arisen, he was of opinion that they might be readily dealt with by the local authorities, to whom he had also on many occasions pointed out the necessity of taking stringent sanitary measures, especially at the present moment.

As to the complaint of a British subject being unable to get a piece of land at Niigata, he observed that there were at present some 14 foreign residents at that port, all of whom appeared to have been able to acquire land without any obstacle, and if one individual British subject found difficulty in doing the same as the others, there must, he thought, be some particular reason for it.

Regarding the practice considered objectionable, in consequence of which execution of a judgment was delayed while the Japanese defendant was appealing, Mr. Shioda observed that, according to the old rule, execution was to commence at the Cour d'Appel even when the defendant appealed to the Cour de Cassation, but this rule had now undergone some modification, because difficulty had been experienced in enforcing the appearance before the Cour de Cassation of foreign suitors who had already obtained satisfaction of their claims by the execution of the judgment of the Court of Appeal.

In regard to the question of giving security he was not clear as to the point at issue, since he believed that the Court was not empowered to require security being deposited for the purpose of covering the amount involved in the litigation.

As to the proceeding in bankruptcy referred to by Sir Harry Parkes, Mr. Shioda said that this question was now under the serious consideration of his Government, and would certainly constitute a special portion of the forthcoming new Commercial Code.

The President observed in conclusion that he was quite ready to take up the question if Sir Harry Parkes would furnish him with the details of the special cases of which he complained, as it was difficult for him to say anything definitively in reply to a complaint of a general nature. He preferred however, to treat these questions as daily or current business of the Foreign Department, and not as a subject to be discussed at the Conference.

Sir Harry Parkes regretted that he could not concur in the concluding remarks of the President. He respectfully submitted that the questions he had brought forward might properly be considered by the Conference, as they pertained to Groups II and V. When Group II (Civil jurisdiction) was being discussed at the sitting of the 9th February he then begged that note might be taken of his desire to invite the attention of the Conference to the subject of Japanese Bankruptcy procedure at a convenient opportunity. Group V (Land Tenure and Conditions of Residence in Open Ports) was passed over by the President in order that he might sooner place before the Conference his important proposals on the subject of jurisdiction. If this Group had been discussed in the original order, Sir Harry Parkes would then have brought forward the subjects relative to the conditions of Residents at the Ports which he had mentioned to-day. In order to show the great desirability of measures being taken to remedy the present condition and administrative system of the Foreign Settlement at Yokohama he begged to lay before the Conference a copy of a memorial bearing 300 signatures which he, in common with all the other Foreign Representatives, had received from the Foreign Residents.

In regard to Niigata His Excellency remarked that some fourteen foreign residents appeared to have been able to acquire land there without obstacle, and if one individual British subject found difficulty in doing so it must be owing to some

particular reason.

There was no particular reason in the case of the said British subject other than this, that the local authorities at Niigata would not allow foreigners to obtain building land at that port except on onerous and impracticable conditions, such as a five years' lease, and he believed that whatever land had been obtained there by foreigners (except two small garden patches on a sandhill) were held by foreigners in the names of Japanese because they could not obtain reasonable terms in their own names. His contention was that the conditions of the Agreement of 1867 had not been carried out. That Agreement was one of the special conventions named by His Excellency under Group V as one of the subjects for discussion at the Conference, and it provided that "Foreigners may freely rent or purchase from Japanese at Niigata and Ebisuminato lodgings, residences or godowns. They may also freely lease land for their lawful requirements at both these places." He submitted that Foreigners had not been allowed to freely lease houses or land at Niigata, and could not do so at this day. His Excellency was of opinion that such questions might be readily dealt with by the local authorities, and doubtless the local authorities should so deal with them, but in justification of himself for having brought up this question, he was obliged to remind His Excellency that the inability to obtain land had been made the subject of complaint for several years past to the local authorities and also to the Foreign Office at Tokio, but without result, and the Agreement of 1867 remained inoperative. He therefore proposed that a concession should be set apart at Niigata for the use of foreigners within which they could obtain land on terms similar to those existing at the other ports.

The Conference adjourned at half past five o'clock.