

following Tuesday, the 11th July, and continue to sit *de die in diem* as long as might be necessary in order to complete the discussion of the questions still remaining to be considered.

This proposal was unanimously accepted.
 Protocol No. 14 was signed by those present.
 The meeting adjourned at 3 o'clock.

MEETING OF JUNE 17, 1882.

Present:

For Japan,
 Mr. Shioda;

For Austria-Hungary,
 The Chevalier Hoffer von Hoffenfels;

For Belgium,
 Mr. C. de Grootte;

For France,
 Mr. Arther Tricou, Envoy Extraordinary and Minister Plenipotentiary;

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 the Netherlands, for Sweden and Norway and for Denmark,
 Mr. van der Pot;

For Portugal,
 Dom Joaquim José de Graça;

For Russia,
 Baron Rosen;

For Spain,
 The Chevalier Don Luis del Castillo y Trigueros;

For the United States,
 The Honourable John A. Bingham.

Mr. Shioda expressed his regret that it had been necessary to postpone the meeting originally fixed for the 11th instant, owing to the indisposition of the President, Mr Inouye, who was prevented by the same cause from being present at the meeting of this day. Under these circumstances he was authorized by the President to replace him, and to continue the discussion of the questions under consideration.

Sir Harry Parkes presented the following memorandum containing his promised observations on the President's proposals with regard to jurisdiction:

MEMORANDUM.

"When the President at the sitting of the 1st of June communicated to the Conference the proposals of his Government relative to the substitution of territorial law for the extraterritorial system to which foreigners in this country are now subject, I begged to reserve until another sitting the remarks which I should have to offer to the Conference on that subject. I have since gathered that it is the general wish of the Foreign Delegates that these proposals should not be discussed at the Conference, but that they should be submitted as they stand to the consideration of the Governments of the Treaty Powers. It had seemed to me that a question which affects more deeply than any other the rights and interests of foreigners in Japan, might have been advantageously included in that free and friendly discussion which gives to our proceedings their chief value, and I also hoped that by our examination of the subject we might do something to promote the aims of the President, and assist in some degree the Governments we represent in the task of considering a series of important proposals, which can scarcely be decided on theoretical grounds or without regard to local experience. This view, however, has not been accepted by the Conference, and I therefore defer to the wishes of the majority, but I feel nevertheless that I should not omit to offer a few general remarks on the proposals of the Japanese Government, lest silence on my part should be held to denote that I have substantially approved of them as they stand. I consider that the spirit which has actuated those proposals is highly creditable to the Japanese Government and that there is much in them which is worthy of careful consideration, but I also think that some of them are open to serious objection, and that the scheme, owing probably to its being of very recent conception, is not practical in its present shape.

But lest my remarks should possibly be misunderstood, or misconstrued into signifying any unfriendly disposition on my part towards the proposals of the Japanese Government, I will first assure the President of the hearty sympathy which I am satisfied the Government I have the honour to represent will extend to every effort made by that of Japan to effect such reforms in their laws and judicial procedure, both civil and criminal, as would render the maintenance of extra-territorial jurisdiction in this country no longer necessary. The history of the extra-territorial question abundantly proves that my Government has not been behind that of any other western Power in showing its willingness to renounce extra-territorial privileges in favour of territorial jurisdiction whenever sufficient guarantees are afforded for the due administration of justice in the territorial courts of oriental countries, and already in 1872 my Government assured that of Japan that they would gladly make concessions in the matter of jurisdiction as soon as Japan had a proper code of laws administered by tribunals upon which the British Government could rely.

I cannot however subscribe to the opinion expressed by one of the members of the Conference, and recorded in our proceedings, that in Japan the extra-territorial system has occasioned popular discontent. The same intelligent native opinion, which is convinced of the necessity of reforming and elevating the present system of Japanese law and of bringing it into harmony with that of the West, would be strangely inconsistent if it did not also perceive, as I believe it does, that until that harmony is established, or at least materially advanced, the maintenance of the extra-territorial system is indispensable. The same opinion will also readily allow that, until the new penal code came into operation on the 1st of January last, Japan did not possess a criminal law to which foreigners could be expected to submit, and it will also allow that Japan does not yet possess a civil or a commercial code. As late as the close of 1879, a prominent Japanese writer and supporter of the Government showed in an able memoir which was written for the express purpose of advocating the abolition of extra-territoriality, that foreigners could not be expected to repose confidence in the judicial system of Japan as it then stood, because the laws did not afford due protection to the lives, liberties and property of the Japanese themselves, and in consequence of the marked absence of personal liberty which then characterized those laws, he held that they required very considerable reforms before they could be generally approved even by the Japanese people.

I also think it may be safely assumed that the people of this country would not condemn their own Government for having demanded and secured extra-territorial privileges in favour of Japan, whenever they have entered into Treaty relations with Oriental Powers. The principle of territorial jurisdiction, as now applied in the West, is indeed not commonly accepted among Oriental States in their relations with each other, and the time is not so very remote when it was considered in Europe to be the duty of a State to accept the charge of controlling its own subjects when the latter were admitted to trade in foreign territory.

An eminent American jurist and statesman, in an official opinion on extra-territoriality in the East, quotes authorities to show that in the middle ages it was "common to give to distinct codes of law a personal application, according to nations, instead of a merely territorial force", and carrying the argument further, he points out that in substantial effect the law is administered in the United States by nationalities, that is to say that in certain cases it is determined, not by the place of the individual, but by the state to which he belongs.

Reverting now to the proposals of the Japanese Government I shall limit the remarks I beg to offer to a few of their principal features only. These are: that within a period not longer than five years from the date of the ratification of the new Treaties, extra-territorial jurisdiction in all matters, civil and criminal, shall be entirely surrendered by the Treaty Powers, with the exception of certain arrangements in the case of capital charges which are not specified, and certain limited and obviously necessary reservations in matters affecting the personal status of foreigners. All the other conditions of the scheme are made dependent on the prior acceptance by the Treaty Powers of this comprehensive proposal. During the said interval of five years, which is designated "a transition period," it is proposed that the terri-

torial courts shall exercise criminal jurisdiction over foreigners in all cases of "contraventions" wherever committed, in all cases of "delicts" committed by foreigners beyond the existing treaty limits (which would involve the power of imprisonment for five years) and that they shall enforce all administrative regulations both within and without the treaty limits.—In civil matters it is proposed that those courts shall have complete jurisdiction, excepting only in those cases which may arise between foreigners of the same nationality. It will be seen therefore that the powers to be exercised by the territorial courts immediately on the new Treaties being ratified would be nearly as complete as those which they would acquire when all foreign jurisdiction had been abolished.

The privileges on the other hand which would be conferred upon foreigners during the transition period bear no proportion to the degree of territorial control to which it is proposed to subject them. They are to be permitted to travel in the interior for purposes of trade, but they are not to be permitted to reside there, to invest capital or to hold real property. Their present position would therefore be improved only by the acquisition of the right of itinerant trade, which would prove of little value to merchants of standing, and by some enlargements of the conditions of residence and tenure of real property at the Treaty Ports and Cities, while Japanese subjects on the other hand would acquire similar privileges of tenure within the present foreign settlements.

The object of this "transition period," as stated by the President, is "to afford foreign-subjects ample time to accustom and prepare themselves for the new condition of things." But I am unable to see the force of this argument. Practically no time would be allowed the foreigners to make preparation of any kind for the new condition of things, seeing that in all their business operations, in all the affairs of civil life and to a very great extent in respect to their persons and property, they would be subjected to almost complete territorial jurisdiction from the moment the new Treaties were ratified. The object of any preliminary period should rather, it appears to me, be that assigned by one of those eminent jurists who have reported so favourably on the Japanese new penal code and code of criminal procedure and who have been described by the President as "the highest authorities in Europe." The jurist to whom I refer shows that the abolition of extra-territoriality should be preceded by a certain degree of restriction on the jurisdiction of the consular courts during a given period of time, *sufficient to allow of a satisfactory test of the working of the courts constituted with mixed foreign and native judges*, and in order to ascertain whether the new judicature may be *safely* permitted to replace permanently the existing consular court system.

But the plan of the Japanese Government allows of no test or probationary period. The abolition of the extra-territorial system is to be unconditional at the end of five years, irrespective of what may be the result of an experiment under which foreign and native judges, wholly unacquainted with each other's language and modes of thought, and having no previous knowledge of the laws they will be required to administer (for the laws on the Civil side have yet to be made) are to work together in the organisation of a system subversive of all previous native practice and entirely alien to native traditions and experience. And from the

moment of their institution the courts so constituted are to be cloth with entire civil jurisdiction and a very extensive criminal jurisdiction over foreigners, who will have to submit at once and without any preparation, either on their part or on that of the courts, to this very new order of things.

As opposed to this plan I respectfully submit that the adoption of any permanent system should be made dependent on the satisfactory working of a probationary one, and that the course to be followed should rather be of the character of that indicated by the senior legal adviser of the Japanese Government, who, speaking on the part of the latter at a recent European conference, observed that "as Japan removes *one by one* the causes which produced extra-territoriality in her dominions, so should the Foreign Powers withdraw from their consuls—one by one—the powers of judicial administration."

In regard to the constitution of the new courts it is proposed that in mixed cases where foreigners are defendants the foreign judges shall be either numerically in the majority or have a casting vote, while in cases where a Japanese subject is defendant the majority or casting vote shall be with the Japanese judges. Now it is obvious that such a system would prevent, what is above all things necessary, *an uniform administration of the law*, while it would place the foreign judges, who are to serve as "guiding examples" to the native judges, on a footing of mere equality with the latter. I venture to submit that in deciding points of law, I do not say points of fact, it is essential that foreign judges should be in the majority or have the casting vote in all mixed cases irrespective of the nationality of the defendant. The law of Precedent, which will consist in the interpretation put upon the new codes by the courts in their decisions, should form a very important branch of the new law, but will this be the case if the courts are not uniformly constituted? A court that has to change its constitution each hour according to the nationality of the defendant may find itself deciding the same point of law the same day in very different ways. The effect of this would not be so fatal to confidence in the courts, if each judge were required to give his own judgment, for the opinion of the foreign judges even when in a minority would then be known to the public and would still have weight. But if the present system of giving one judgment only in the name of the court, which judgment may be only that of a bare majority, be followed, then a judgment arrived at by a majority of Japanese judges would be as binding as a precedent as that arrived at by a majority of foreign judges, and if it be a judgment of the highest court it would be conclusive, although opposed to the views held by a majority of foreign judges in the Court below. Such a system, I fear, would go far to nullify the advantages of employing foreign judges, one of which is to give to Foreign Powers "the greatest guarantees that the administration of justice in the case of foreigners will be efficient and that the new laws will be *correctly and ably applied.*"

Another of those advantages is stated by the President to be that they—the foreign judges—should not act only in mixed cases but also in purely native cases of importance, "whereby not only would the new law generally be more effectively administered, but the native judges might enjoy more frequent opportunities of profiting by associating themselves in the exercise of their functions with the foreign judges, who

would naturally serve as examples upon which they might model their judicial conduct." I cordially concur in the liberal and enlightened sentiments which animate this part of the President's proposal, and I would only enquire why it should not be applied *at once*, irrespective of the acceptance of the whole scheme by the Foreign Governments and without incurring the delay which that acceptance must entail. It is manifest that the advantages which the President has so clearly shewn would be derived by Japanese judges from their association with foreign judges, and the public benefit which would result from that association by the more effective administration of the new law, cannot be too soon enjoyed either by the Japanese judges or the Japanese people, while it is equally obvious that the efficient operation of the new system in native cases cannot be too soon demonstrated to the governments of the Treaty Powers. But the field for such a demonstration need not be limited to native cases only, but might at once be extended to half, and indeed to a very large half, of the mixed cases also. I allude to all those in which Japanese are defendants at the suit of foreigners. It should be remembered that if the scheme of the Japanese Government is to be successful it must be founded on public confidence, and public confidence is attracted less by good intentions than by accomplished facts. Would not confidence in Japanese jurisdiction on the part of foreigners be greatly enhanced if they were satisfied with the course of native justice in those cases in which they have to sue Japanese subjects, and when convinced by experience of the impartiality and ability of the territorial courts in those cases, would they not be more willing to submit to the jurisdiction of the same courts in cases in which they were sued by Japanese?

The great guarantee offered to the Treaty Powers by the Japanese Government in support of their proposals is the employment of foreign judges, and the success of the scheme must depend upon the character and ability of those judges. It is proposed that they should be engaged during a "sufficiently prolonged period", which the Japanese Government estimate at from six to ten years. I am afraid that so brief a period would not suffice either to attract men of the high standard that should be secured, or to afford to the Treaty Powers a sufficient guarantee of the efficient working of the system. For that guarantee, it will be seen, would continue only for five years, possibly only for one, from the date of the proposed abolition of the extra-territorial system, and from that time, which, in such a question as this, might be said to be almost immediate, the working of the complicated system of Western law, which is the result of the legal experience of ages, would be left to the unaided endeavours of native judges.

In reserving to themselves the right of selecting the foreign judges—all of whom, unless it be those of the Courts of First Instance, will obviously have to be sought for in foreign countries—and in determining for themselves whether the candidates possess the proper professional qualifications and experience for such high office, the Japanese Government have undertaken a task of no ordinary difficulty and responsibility. I venture to intrude no opinion on this delicate subject, or on the heavy cost that the engagement of twenty high class foreign judges must necessarily entail. But it seems important to enquire what will be the foreign language of the Courts presided over by these judges, who, I presume, will be selected from various

nationalities, and what will be the language of the foreign version of the laws which they will be required to administer? The official language of the courts in which their proceedings will be recorded, and their decrees and judgments, delivered cannot be Japanese alone, for, on the arrival of the foreign judges in the country they will not be able to read a word of a Japanese statute in the original text, nor to communicate with their native associates except through the medium of an interpreter. If they are to act upon a translation of the new codes, the importance of an authoritative translation, and of the perfect accuracy of that translation, is self-evident, and I may here mention that some material differences between the French version of the Penal Code supplied to the Conference and the original Japanese text have been already pointed out to me.

As bearing upon the question of the foreign language of the law and the courts, I beg to express my entire concurrence in the suggestion offered by the honorable member of this Conference most qualified to make it, namely that the new system of law and procedure constructed by the Japanese Government should conform to the principles not only of French law but also to those of English Common Law and Equity and, as I believe he added, to those of English Admiralty Law. It may be found difficult to reconcile in all cases the principles of these various legal systems, but on that point I need not dwell. I would only now observe that the justice of the honourable member's observation is sustained by the fact that two-thirds of the foreigners residing in Japan and ten-elevenths of the shipping frequenting Japanese ports are English and American. English may be said to be the language of the foreign trade of Asia, and it is understood with few exceptions by all foreigners in this country. It is also the language of the most extensive and best known system of Commercial Law. It appears to me, therefore, that, as the procedure of the courts cannot be conducted in a variety of foreign languages, and that as the English language and English Commercial Law alone can be appropriately used and applied in a very large proportion of the mixed cases that will come before the proposed courts, it will be found necessary to adopt English as the official language of those courts and of the foreign version of the new codes.

I would also venture to suggest that the training of the body of interpreters who are to be employed in the proposed courts cannot commence too early. It is evident that the best efforts of the foreign judges would be rendered nugatory unless they were assisted by competent interpreters, and that competency I submit can only be adequately tested by a public examination of a sufficiently high standard. A different class of interpreters to those now in existence will therefore have to be created; they should be regarded as important officers of the court, receiving emoluments in proportion to the importance of their office, and in addition to their linguistic attainments they should possess no inconsiderable knowledge of the rules of evidence and of technical procedure.

It seems to me very desirable that something should be known respecting the position and character of the Bar which will form an indispensable adjunct to the mixed courts. The successful working of the new scheme must obviously greatly depend upon the efficiency of counsel, and it is presumed that the native judges who are gradually to replace the foreign judges, will be selected from the ranks of

the native Bar. Although very laudable efforts have been made by the Japanese government to establish schools of law in Japan, and although various foreign governments have willingly contributed to that good work by affording to Japanese students in their universities and inns of court the fullest educational facilities, I believe I am not incorrect in stating that barristers of the standard known in the West, and without whom a system of western law cannot be efficiently worked, do not yet exist in Japan.

It appears to me that although Her Majesty's Government will doubtless receive the proposals of the Japanese Government in the most friendly spirit, and will be fully disposed to afford the latter all the encouragement in their power, the consideration of those proposals must entail considerable delay, as they will, I fear, find it difficult to arrive at a final decision, until they have before them the whole body of law which is to be administered in the proposed courts. They cannot be expected to determine such a question on being simply told of the principles of the projected laws, for the value of principles depends in no small degree upon the mode and practicability of their application. Before they can judge of the new laws it must be fully known, as the President justly observes, what those laws are, and the Civil Code is not only not known, but is still far from complete.

The interval, however, which obviously must elapse before a decision can be taken, will afford ample leisure for the examination of the proposals of the Japanese Government by all the parties concerned, and knowing, as I do, how pressed the President has been to bring out a plan of great magnitude within a period which appears to me to be quite insufficient for its mature consideration, I am glad to think that he will now, if he wishes, have time and opportunity of giving it closer and more deliberate study and of benefitting by higher legal opinion than that which was accessible to him at the moment of its conception. I fear that the plan, as it stands, is not calculated to awaken, among my countrymen at least, that mutual confidence between foreigners and Japanese which the President hopes by means of this measure to inspire, and therefore that it is not likely to encourage the introduction into this country of foreign capital, which is essential to its future prosperity. To effect these highly desirable objects the plan should, in my opinion, be more gradual in its operation; and before final adoption it should be proved by experience of its working in successive stages, that it can be safely and efficiently applied. If it would be agreeable to the President to receive from me a few suggestions relative to a primary stage which could be entered on at once, which would be economical and easy of application and which, if successful, would promote the ulterior objects which the President has in view, I shall be happy to submit a memorandum to His Excellency's consideration.

In conclusion, I should add that I offer these remarks solely on my own responsibility, for, like all my colleagues, I can have no particular instructions relative to a project which is entirely novel. I offer them, let me repeat, not with the view of obstructing, but of eventually advancing the President's aims. And if I desired to discuss his important proposals at the Conference, it was only because my Government hopes that a free and friendly interchange of views between the Foreign Representatives and those of the Japanese Government who are here

assembled, would serve as one of the best means of ascertaining what amendments may safely be introduced into the existing Treaties, with due regard to the advancement made by Japan since they were concluded, and also to the interests of the subjects of the Treaty Powers who have settled in this country under their provisions.

The Japanese Delegate said he had listened with great interest to the memorandum of the Delegate of Great Britain, and reserved any observations thereon until his colleague the First Delegate for Japan should have had time to consider it.

The Japanese Delegate observed that the meeting of the 29th June was adjourned without any understanding being arrived at as to the question of arranging for the commercial parts coming into force before the rest of the new Treaties.

Some time having since elapsed, he hoped that the Delegates had had sufficient leisure to consider this point, and that they were now prepared to state their opinion.

Mr. Bingham saw no difficulty in having the new Treaties drawn up in such a manner as to allow of the commercial part coming into operation before the remainder, and he understood that there was no difference of opinion among the Delegates on this point. Assuming this, he asked whether the Tariff was to be presented to the Foreign Governments without any proposal as to limitation.

Mr. Shioda said that the question of limitation would be considered later on.

Mr. Bingham added that if the Japanese Government meant the basis of Revision to be simply the Tariff duties and Light Dues he respectfully requested that they say so distinctly, so that there might be no doubt what was meant.

Mr. Shioda replied that it was proposed to include Light Dues, Drawbacks, etcetera.

Sir Harry Parkes desired to repeat what he had already observed on a previous occasion, namely, that of the subjects to be dealt with, the commercial questions admitted of being arranged at once, while those which related to jurisdiction would require time for consideration. It would be undesirable, he thought, to lose the opportunity of coming to an agreement on those points which admitted of immediate settlement, such as the Tariff, Bonded Warehouses and Drawbacks, Trade Regulations, Light Dues, the admission of foreign vessels to the coast, the passport system and the relief of foreign merchants from the restrictions placed upon trade by unfair combinations. Those questions, he submitted, could be made the basis of an arrangement which might be concluded in advance, without waiting for the jurisdiction question, the consideration of which he anticipated would occupy a long time. An early settlement of those questions would form merely an instalment of revision, and need not impede the further progress of that work.

Mr. Bingham replied that it was quite possible to arrive at a basis for a commercial Convention, including all the subjects named by the British Delegate, as well as the President's proposition relative to jurisdiction. None of the Delegates having instructions to conclude a Treaty, there was no need to go into details. It would be easy to draw up a brief sketch of what was required. As to the travelling regulations, they must depend on the general character of the Treaty. The question was: Are the Treaties to be revised in whole or in part? The President had presented four propositions on which the Governments could agree or refuse to revise as they liked.

Those propositions were inherently just in themselves, and the Governments would no doubt entertain them favourably. These were 1st. The Tariff (with a limitation he hoped), 2nd. Light and tonnage duties, the rates of which had been already proposed and might be fixed in the revised Treaties, if the Foreign Governments should not consent to let the Japanese Government exercise their discretion, 3rd. the enlargement of the opportunities of commerce by opening the whole country to foreigners to hold real property and to undertake every description of enterprise, subject to Japanese laws administered by Japanese tribunals, and 4th. the abolition or amendment of the Favoured Nation clause. The question therefore was:— Would the Government agree to revise the Treaties on the general basis thus proposed.

The French Minister, insisting upon the intimate connexion between the questions under consideration, was of opinion, as he had already taken occasion to observe, that they ought to be considered simultaneously. He was unable therefore to concur in a proposal, which would have the effect of separating the commercial part from the entirety of the negotiations.

The German Minister observed that since it was the desire of the Japanese Government to arrive at a conclusion concerning the commercial part of the Treaty, and seeing that, as had been said by the British Delegate, that part could be arranged more quickly than the rest, he was willingly to recommend to his Government that an agreement should be come to on that proposal, with a stipulation that the jurisdiction question was not abandoned.

The Belgian Delegate declared his concurrence in the opinion of the German Minister; Sir Harry Parkes had evidently expressed the view of the Japanese Government, namely that the commercial questions were capable of being dealt with more speedily, and therefore should come into force at an earlier date.

Mr. Bingham suggested that in the meantime, and until the Japanese Government were prepared to carry out their stipulations as to the framing of the codes and the establishment of courts, the rest of the proposed treaty amendments might be agreed to, and a time fixed when the same should come into force, and to terminate at a fixed date, after which time the Japanese Government should be free to prescribe their own Tariff of Impost duties and Light and Tonnage duties.

Mr. Shioda remarked that he understood the majority of the Delegates to agree to his proposal, and he hoped that those Delegates who dissented would reconsider the matter and withdraw their objections.

The Italian Delegate observed that not having received any instructions from his Government either to accept, or refuse the proposals presented by the Japanese Government during the Conference, he could simply express his personal opinion, which was the following: The Delegates had been called upon to take part in the Conference with the object of agreeing amicably as to the basis of certain amendments to be introduced into the existing treaties. The Japanese Government now expressed a desire that the commercial questions, such as the Tariff, Light and Tonnage dues, Passports, Coasting Trade, Drawbacks and Commercial Regulations etc., should be separately considered, because in the opinion of the President an understanding on these questions could be more easily and promptly arrived at than on the jurisdiction question, the consideration of which would take more time.

In view of this expressed desire, and moreover, not being called upon to enter into the question whether it would not be the true interest of the Japanese Government to discuss the whole together, he would with great pleasure request his Government to take this wish into their favourable consideration, associating himself as regards this matter with the declaration of the English and German Delegates.

The Delegates for Austria-Hungary, Portugal and Spain joined in the declaration made by the German Minister.

Baron Rosen expressed his willingness to agree to the proposal of the Japanese Government, but inquired whether it was meant that there should be a separate Convention. If so, it appeared advisable to have that point clearly stated.

The Japanese Delegate replied that a separate Convention was intended. He thereupon read the following proposal:—

“As the commercial questions may be dealt with at once, while those relating to jurisdiction must take a longer time to consider, the Japanese Government propose that the Foreign Delegates should recommend to their respective Governments to settle the former questions first by special convention, and to proceed with the arrangement of the latter as soon as circumstances will permit”

Mr. Bingham proposed the following amendment, namely, that the following words be added at the end of the motion proposed by Mr. Shioda:— to wit: “and also to recommend that said convention shall expire on a day and year therein to be named by the high contracting parties, at which time all existing Treaty restrictions upon the Japanese Government as to the imposition of import duties, light or tonnage duties, shall cease and be of no effect.”

Mr. Shioda objected to the word “restrictions”, and at his request it was altered to “stipulations.”

The French Minister gave his opinion on the proposition of the Japanese Government in the following terms:

“I will not fail, as far as I am myself concerned, to transmit to my Government the entirety of the questions which have been submitted to our consideration, leaving to them the task of determining in the spirit of conciliation of which they have already given so many proofs to the Court of Tokio, which of those questions appear to them capable of being settled without delay. Only, since mention has been made of special conventions, it may perhaps not be unnecessary to recall what was the starting-point of the Conference, suggested by the British Government and adopted, if I do not mistake, by the other Cabinets. It was a question, as every one remembers, not of the abrogation of the existing Treaties, but simply of their revision, those treaties not being capable of being terminated by giving notice on either side, but admitting only of successive ameliorations.

The Tariff and trade regulations now in force form an integral part thereof, and consequently partake of the permanence which characterises them. I do not know what modifications may be introduced into these regulations, but under whatever form they may be stipulated, I conceive for my part that being destined in the same manner to form an integral part of the revised treaties, they must derive from those treaties the indefeasible character of which the latter cannot be deprived.

Mr. Shioda replied that he would answer the remarks of the French Delegate

when the question of duration came to be discussed.

Mr. Bingham demanded that the vote should be taken first on his amendment, as being in accordance with universal practice.

Mr. Shioda explained that he accepted the principle of the amendment, but thought it preferable to vote first on the main proposition.

Mr. Bingham protested against the adoption of this unusual course.

The vote was then taken on the original proposal of the Japanese Delegate, which was agreed to unanimously by all the Delegates, with the exception of the French and United States Ministers.

Mr. Bingham's amendment, with the substitution of "stipulations" for "restrictions," was then put to the vote, when the Delegates of Japan, the United States and Russia declared themselves in its favour, and the Delegates of Austria-Hungary, France, Germany, Great Britain, Italy, the Netherlands, Portugal and Spain pronounced themselves against it, the Belgian Delegate abstaining from voting.

The French Delegate in view of the amendment proposed by Mr. Bingham, emphasized his previous declaration.

Mr. Shioda read the following memorandum on the Coasting trade:—

FOREIGN SHIPS UNDER JAPANESE CHARTER.

Regulations, Jurisdiction, etc.

With reference to the proposed concession of the privilege to foreign shipping to go, under Japanese charter, to unopened ports in the Empire, it will readily be understood that the general Regulations under which this privilege is to be exercised will require careful consideration at the hands of various Departments of the Government, and can only therefore be brought forward in a definite shape after the lapse of some time. A general idea, however, of the principles which the Government would desire to see observed in framing such Regulations may be given now: while with regard to the special question of jurisdiction during the stay of a foreign ship in an unopened port, it is desirable that a rather more definite proposition should be made.

In the Memorial on the subject addressed to Sir H. Parkes, and presented by him to the Conference, an outline of such Regulations is sketched, which it may be said appears capable of forming a reasonable and practical basis, upon which more complete rules can, by the introduction of necessary additions and modifications, be eventually framed. In particular the following are deemed essential conditions of the enjoyment of the privilege in question.

1. (a) Ships so engaged should be prohibited from accepting freight or passengers on the owner's or master's account or on account of any other person native or foreign besides the charterer. (b) And the master and other foreigners on board should also be prohibited from doing any kind of mercantile business in unopened ports on their own or any other account either by themselves or conjointly with Japanese.

(c) The charter must be made by Japanese merchants having established and recognized places of business, and must be *bonâ fide* on Japanese account exclusively, no interest therein being held directly or indirectly by foreigners. Any attempt to make an improper use of the privilege, or to evade the law in any of the particulars above mentioned or by other similar means, should, besides sufficient fines, entail cancellation of the permit and confiscation of goods (if any) bought or sold under such illegal conditions.

2. Independently of dues chargeable upon them as foreign-going vessels, ships engaged on this service should pay Light and Tonnage Dues 10 per cent higher than national vessels engaged in the coasting Trade. And a substantial License Fee calculated on tonnage or otherwise would have to be charged on the granting of a permit of charter.

3. The privilege must be confined to actual coasting voyages: i. e. a ship so chartered must discharge her coasting charter at an open port, and make a distinct clearance thence on departing for a foreign port.

As regards the special question of jurisdiction. The outline of Regulation in the Memorial above referred to recognizes (Rule 5) the necessity which of course exists for the observance by ships thus engaged of all Harbour as other similar Regulations; while the chance of trouble arising from the personal acts of the crew is also reduced to a *minimum* by the proposal (Rule 6) restricting the right of landing and making it dependent on definite arrangements and the special permission of the local authorities. Taking these two branches of the question separately, it is proposed arrangements should be made upon the following principles.

1. Regulations to be observed by the master and crew with reference to the ship itself and matters connected therewith, e. g. Harbour and other local Regulations etc. (a) The Local Authorities should have complete executive control, including of necessity the power of compelling obedience, by forcible means if absolutely necessary. (b) Penalties prescribed by the law for breaches of such Regulations should be exigible from the master by the territorial courts. (c) In case of wilful and persistent neglect or refusal to conform to the Regulations the Local Authorities should be empowered to refuse or withdraw the right of doing business with the shore, including as of course the use of all necessary means to this end.

2. Personal acts of the persons on board ships in unopened ports. (a) Landing by foreign persons, except the master of the ship on the actual business of the ship, should be prohibited without the special permission of the Local Authorities; and such permission would naturally be grantable only on such terms as to time, number of men allowed on shore at one time, local limits etc. as the authorities might prescribe; and in case of troubles arising all further permission might be at once withdrawn. (b) The Local Authorities should have complete control both on shore and if necessary on board the ship, including the right of arrest, forcible detention or return to the ship of offenders, etc. (c) Small civil debts should be recoverable before the Local Authorities up to the limit say of the jurisdiction of *juges de paix* (i. e. up to 100 *yen*), including of necessity the means provided by the law for executing or enforcing judgments in such cases. (d) The judicial police should have exclusive jurisdiction in Contraventions. (e) In Delicts the offender upon arrest should be detained on

shore in the hands of the Local Authorities and thence conveyed either by land or sea, as speedily as circumstances permit, to the nearest open port for trial. If upon arrival at such port it be found that there is no consular court there established competent to try the case, a communication setting out the circumstances should at once be made to the Consul-general of the offender's nationality: and if he did not thereupon intimate his intention of despatching a judicial officer to try the case, jurisdiction should be assumed by the territorial authorities. (f) In 'crimes' the offender should in all cases be detained and taken before a Consular court, and in no circumstances should jurisdiction in crimes revert to the territorial court.

It is understood that these proposals, relating to jurisdiction refer only to the existing state of things, and are made with a view to allowing the proposed concession to come into operation at an earlier time than could be fixed for the inception of the proposed changes in jurisdiction, and that the plan here sketched would be inappropriate if the concession itself, together with the Tariff, were not to come into force at an earlier period than the rest of the Treaty; for in that case the general proposals relating to jurisdiction would apply from the commencement instead of coming in to supplant the scheme here proposed at a subsequent point during the period of the concession.

The President would beg also to call again the particular attention of the Delegates to the special and temporary nature of this concession—the continuance of which beyond the specified time would be inconsistent with the national interests of Japan as an island empire with a seaboard of exceptional proportions. He desired therefore that whilst the new Treaties should declare the complete reservation of the whole Coasting Trade to Japan, the concession of the privilege in question should be expressed to be a partial and temporary exception upon that principle, and that it should be expressly declared that at the expiration of the specified period all privileges in connection with the Coasting Trade should absolutely lapse, and the normal state of things as settled by the new Treaties thereupon immediately come into existence.

Sir Harry Parkes reserved his observations until he should have had sufficient time to study this proposal.

Mr. Tricon observed that the restrictions which the Japanese Government desired to place on the coasting trade in the unopen ports amounted to a complete interdiction.

The Japanese Delegate laid before the Conference the following Memorandum relative to "Japanese seamen in foreign vessels and foreign seamen in Japanese vessels," which was taken as read, the discussion of the question being postponed to another occasion.

OF JAPANESE SEAMEN IN FOREIGN SHIPS
AND
OF FOREIGN SEAMEN IN JAPANESE SHIPS

I. *Japanese Seamen on Foreign ships.*

While Consuls everywhere exercise abroad a certain authority and jurisdiction over their national ships and their crews, in Japan they are invested also with a general judicial jurisdiction over their nationals, which, in the absence of any superior claim, includes jurisdiction over seamen even of other nationalities on board their national vessels.

This combination of powers quite distinct from each other in the same official persons tends to create some confusion in cases where Japanese subjects are employed as seamen on board foreign vessels. With a view to obviate such difficulties in future, it is proposed to define the position of Japanese subjects in such circumstances upon the following principles. It is proposed to take as a basis the well recognized distinction between matters connected with the discipline of the ship on the one side and all matters having a wider bearing on the other, and with regard to the former to admit the executive and quasi judicial authority of the Master or (in harbour) of the Consul, as the case may be, reserving only the point that no offence committed by a Japanese subject shall be judicially enquired of or punished by any foreign tribunal in Japan, nor shall the master be empowered whilst in a Japanese port to use forcible restraint against the person of a Japanese member of his crew. On the other hand, in all matters unconnected with the discipline of the ship the Japanese members of the crew would, whilst in the Japanese harbour, be independent of any but their own national authorities.

In order further to facilitate the maintenance of discipline on board foreign merchant vessels in Japanese waters, the Imperial Government would be prepared to enter into mutual conventions for the surrender of Deserters from such ships—the operation of such conventions upon the subject of the surrendering government being dependent upon conditions of reciprocity.

II. *Foreign Seamen on Japanese ships.*

In accordance with an undertaking given in Protocol V when the question of jurisdiction and the authority of the master over foreign seamen on Japanese ships was briefly adverted to, I would propose that the principles enunciated above with regard to Japanese seamen on foreign ships should be applied *mutatis mutandis* to this case. All that is necessary therefore is to agree upon a declaration that these principles shall, *conversely applied*, govern such cases. There is however a different point upon this side of the question upon which a further declaration is desirable.

Consistently with the above principles thus conversely applied offences committed by foreigners on board a Japanese vessel on the high seas would be cognizable in Japanese harbours by the foreign in preference to the Japanese authorities. Serious doubts however may, it is believed, be entertained not only as to the competency of some of the foreign courts established in Japan to assume jurisdiction in such cases, but further, whether, (in the case of some states at any rate) their national courts, *wherever* situated, could exercise such jurisdiction, especially if the accused were an actual member of the crew of the vessel.

It is proposed accordingly to stipulate that (as has been already proposed and agreed to in analogous circumstances—see Protocol No. 4 *sub finem*) in case the Foreign Court should decline or be declared incompetent to assume jurisdiction, the jurisdiction of the Japanese Courts should revive and be exercised against the accused.

A convention containing provisions of detail drawn in accordance with the above general principles would, it is believed, obviate the difficulties which already occasionally occur, and which may confidently be expected with the growth of the interests concerned to occur with far greater frequency in the future.

In continuation of the subject of the present condition of the foreign settlement of Yokohama which he had brought to the notice of the Conference at the meeting of the 15 June, under Group V, Land Tenure and Conditions of Residence at the open Ports, Sir Harry Parkes begged to lay before the present meeting another memorial from the foreign Residents at that Port, which was intended to supplement the one which he had presented at that meeting. It related to the water supply of Yokohama. The memorialists showed that the foreign settlement was dependent on shallow wells sunk in the various compounds, which, according to the report of the sanitary examiners in 1879 and 1880, had been proved to be contaminated by sewage and unfit for drinking purposes.

Those wells were of course in a worse condition now than they were in the years named. In a considerable portion of the settlement no water whatever could be obtained fit even for washing. The remedy was shown to be an extension of the Rokugō aqueduct, which had already been brought into the native town, but unfortunately in wooden pipes only. These were laid in a portion of their course from Kanagawa to Yokohama through marshy soil. They were liable to leakage, contamination and quick decay, and being unable to bear any great pressure could not be used in the case of fire, which consequently caused great destruction of property in Yokohama. But, the most important evil connected with this want of pure water was that it was fatal to health, and the existing serious outbreak of cholera had been clearly traced to this course. The memorial prayed that measures might be taken as soon as possible to supply Yokohama from Kanagawa with pure water conveyed through iron pipes, for unless this work were undertaken at once it could not be completed before the summer of 1883, when the ravages of disease would be worse than they now were. If the Japanese Government objected to incur the cost of such an undertaking, the foreign residents were willing to form a company and to do it themselves under similar conditions to those which had ensured the success of

water-works in many other large cities and towns. He ventured to submit that the subject was not unworthy of the attention of the Conference, for it concerned human life both foreign and native, and in view of the fatality of the epidemic which was now rife, he considered that the responsibility rested upon any one in an official position to do whatever might properly come within his power to promote such remedial measures as were clearly within reach.

Mr. Bingham remarked that this subject could not properly be brought before the Conference.

Mr. Shioda replied that he had already spoken to the Prefect of Kanagawa upon this subject, and was glad to state that the latter had already prepared elaborate plans for a water supply. There remained however several important points yet to be decided in connection with those plans, among which he would mention, where the water supply should be obtained from and what proportion of the expense should be borne by the foreign residents. The Prefect was doing all in his power to ensure the speedy adoption of a practicable scheme.

Mr. Tricou declared that he associated himself with the observations made by Sir Harry Parkes. It appeared to him that the repeated complaints which he had received on the part of the French residents at Yokohama with respect to drinking water, especially in the present circumstances, should be taken into serious consideration. If the Japanese Authorities were unable themselves to take the measures demanded by the health of the Foreign concession, they ought to authorize the foreign residents to establish a municipality on the model of that which worked so well at Kōbe.

The Delegates of Austria-Hungary, Germany, Italy, Portugal and Russia wished it to be understood that they were quite ready to join Sir Harry Parkes in any representation considered desirable to secure the ends aimed at in the Memorial put on the table, but they abstained from taking part in the discussion, as they preferred to treat the matter apart from the Conference, within the scope of which it was not, in their opinion, included.

Sir Harry Parkes proposed that the four memorials already handed in by himself on behalf of foreign residents might be printed and attached to the protocol of the present meeting.

Mr. von Eisendecker desired that it might be placed on record that it was the special wish of the Swiss Government, which he had the honour to represent, that in future merchant-consuls should continue to exercise jurisdiction as hitherto.

The meeting adjourned at 5 o'clock.