

MEETING OF JULY 18, 1882.

Present:

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

Mr. Shioda informed the Conference that the President, Mr. Inouye, being still indisposed, was unable to be present at the meeting. He had consequently been charged by the President to represent him on this occasion.

Mr. Tricou said that he was anxious to declare, before the business of the meeting was proceeded with, that the scheme of jurisdiction as formulated did not offer the guarantees which the good administration of justice would require.

Mr. Shioda, not wishing to enter into the discussion of this subject on the present occasion, begged only to draw the attention of Mr. Tricou to the observations with which his predecessor received the proposals of the Japanese Government at the meeting of the 1st June.

Mr. Shioda observed that the order of the day was:—Neutrality, Shipwreck Conventions, and his reply to Sir Harry Parkes on the points raised by him with regard to Bankruptcy of Japanese traders, Security to be taken from Japanese

defendants in appeal cases, and the renting of land at Niigata by foreigners. With regard to Neutrality, it appeared that this question, which related simply to the plots of ground conceded to various Powers at the open ports for the purpose of forming Naval Depôts, was not one of general interest to all the Powers, and the Japanese Government therefore preferred to deal with it in separate communication with the Powers concerned.

With regard to Shipwreck Conventions, it was the intention of the Japanese Government to propose the insertion of a clause in the new Treaties, based upon the Shipwreck Conventions already concluded with Great Britain and the United States.

This proposal was concurred in by all the Foreign Delegates,

There was one subject omitted from the list of Groups into which the questions for discussion had been divided at the outset of the Conference, namely the protection of the sea-otter and seal fisheries in the North of Yezo and the Kurile Islands. In recent years many foreign vessels had frequented those parts for the sake of the fishery, and it had become necessary to establish a license system for its regulation. It would be proposed to insert a clause to this effect in the new Treaties in order to secure observance of such a system by foreign vessels.

The Foreign Delegates accepted the principle of this proposal.

Mr. Shioda then proceeded to give the reply he had promised to make at the meeting of the 29th June on the points raised by Sir Harry Parkes on Japanese procedure in bankruptcy, and on the want of security by Japanese appellants for the satisfaction of an adverse judgment, when confirmed by the courts of appeal. He begged to observe in the first place, in reference to the delay alleged to have been occasioned in the Japanese courts and as being injurious to the commercial interests of foreigners, as well as to those of the Japanese, that it would be very difficult in his opinion to determine as to whether the delay so complained of was directly and entirely owing to negligence on the part of the court, or whether such delay might not be attributable to some other cause. As far as his information went, he was under the impression that it was the practice of the Japanese court to attend at once to any suit in which foreign interests were involved, that is, the court proceeded at once, without following the order of the dates according to which all other native or ordinary cases were proceeded with.

In regard to the question of bankrupt procedure, he thought he could do no better than to show the practice which was actually followed by the Japanese courts under certain rules in matters of bankruptcy, and which appeared not to be sufficiently well known to foreigners (except perhaps those embracing the legal profession). Upon an act of bankruptcy being committed, the creditors were entitled to lay the case before the court and invoke its judicial assistance, and the court thereupon examined into the case, and upon proof of the facts alleged forthwith declared the debtor bankrupt. The fact of bankruptcy was then brought to the knowledge of all the creditors and other persons concerned, by means of advertisement in the journals and by notices exhibited on different public notification boards.

The Court at the same time ordered the *Ko-chō* (maire) to take charge of and place under seal all the property found in the possession of the debtor; and from that

moment the debtor was interdicted from dealing in any way with his property, though he was allowed to appeal to the *Jō-tō Sai-ban-sho* (Court of appeal). Upon his being finally declared bankrupt by the *Jō-tō Sai-ban-sho*, the *Kō-chō*, by the order of the Court giving the judgment in the first instance, proceeded to the disposal or realization of the estate and the property of the bankrupt debtor, either by public auction or otherwise, and the proceeds were then paid into the Court by the *Kō-chō*, there to be divided and distributed according to the rules prescribed by the law, which in the first place set apart a provision for taxes due to the Government and Court fees and expenses etc. etc. and secondly for the payment of creditors holding mortgages of the debtor's estates—the balance being distributed among all the other creditors ratably.

It would thus be seen in those arrangements that foreign creditors were no less favourably treated than Japanese, and had precisely the same voice as the native creditors. Indeed he recollected a case, where a foreign creditor was allowed to go, with a passport issued by the Foreign Department, to a place outside the Treaty limits, for the purpose of personally attending the public sale of a property of certain bankrupt Japanese, in which he was interested. He ventured therefore to think that there was no foundation for the fear that an insolvent debtor would be free to dispose of or make away with the property of his creditors pending the final judgment, as suggested by Sir Harry Parkes, because, as already stated, the moment a debtor was summarily declared bankrupt by the Local Court the whole of his property was immediately placed under the custody of the *Kō-chō* (maire), without however interfering with the debtor's right to bring successive appeals. All transactions or contracts entered into from the inception of the bankruptcy were declared fraudulent and dealt with accordingly, and specific provisions were now made for such cases by Sections 388, 389 of the Penal Code. He trusted that these explanatory remarks would serve to remove the doubt which he understood to be entertained by Sir Harry Parkes.

Mr. Shioda further observed, that as regarded the question of security in the case of appeals referred to by Sir Harry Parkes at a previous meeting, he was happy to say he entirely appreciated the importance of the matter, and the abstract truth of the observations then made by the British Delegate. He now found that there existed precedents of practice governing the case in question, namely that when a defendant, being unsuccessful in the first instance, was suspected of an attempt to gain time by means of successful appeal with the object of making away or concealing his property, the plaintiff might apply for an injunction to prevent the defendant doing such an act, and the Court would grant the same upon applicant's depositing a sufficient amount of money as security, or in default of depositing money, finding sureties to give security for him.

This practice he thought met the case which was made one of the subjects of complaint by Sir Harry Parkes, and there could be no difficulty in applying this practice in any case where foreigners were concerned, provided they deposited a sum of money or gave security as required by the Court.

Sir Harry Parkes thanked Mr. Shioda for his valuable communication, and begged that he would indicate the Japanese decrees or laws which governed the

procedure he had described, as he—Sir Harry Parkes—would at once make them known to British subjects. He should point out that in bringing this subject forward at the meeting of the 15th June he had not charged the Japanese courts with negligence or delay, but had pointed out that the existing system of procedure, as he understood it, called for remedy. He begged to inquire at what date the procedure described by Mr. Shioda had come into force.

Mr. Shioda produced the following Decrees;—No. 181 of the 23rd day of the 6th month of the 5th year of Meiji, No. 71 of the 3rd day of the 7th month of the 7th year of Meiji, No. 275, dated the 18th day of the 9th month of the 5th year of Meiji, No. 88 dated the 5th day of the 3rd month of the 6th year of Meiji, No. 252 dated the 17th day of the 7th month of the 6th year of Meiji, No. 53 of the 10th day of the 4th month of the 8th year of Meiji, No. 9 of the 13th day of the 9th month of the 5th year of Meiji, and No. 68 dated the 14th of the 10th month of the 9th year of Meiji.

Sir Harry Parkes ventured to suggest that those Decrees would not meet the case, as the very same objections which he had raised to the native bankruptcy procedure &c. had been raised in authoritative Japanese quarters at a later date. He had been informed that in December 1876 the Council of State (*Dai-jō-kwan*) had drafted and submitted to the Senate a bill which was intended to meet these objections. In introducing the Bill the representative of the Council of State was reported to have observed that "It had come to his knowledge that cases frequently occurred in which judgment debtors, though fully aware of the justice of the decision and the futility of attempting to reverse it, filed notice of appeal with the sole object of gaining time to conceal their property. Thus when the final judgment was rendered and the debtor was declared bankrupt, the creditors got actually nothing." It would be seen that these were exactly the terms of his—Sir Harry Parkes'—complaint. The Senate however did not accept the Bill of the Council of State, but substituted another one drafted by themselves, which was rejected in turn by the Council of State, and consequently, as far as he was informed, no law had yet been passed on the subject, and any practice now in operation was not sanctioned by any express provision of the law. If this conclusion were incorrect, he would be greatly obliged to Mr. Shioda if he would furnish him with definite information, in order that he might inform British subjects what was the real state of the native law on the subject.

Mr. Shioda observed that the question of Bankruptcy Law and Procedure was now under the consideration of the Commission engaged in the consideration of the Draft Commercial Law.

In regard to the matter of the leasing of land for building purposes to foreigners at Niigata, Mr. Shioda said that he had prepared a reply to Sir Harry Parkes' statement, but as he desired to avoid going unnecessarily into details, he would confine himself to observing that it was a question of the length of time for which it would be expedient that lease should be made, and that he was willing to treat this question apart from the business of the Conference, with the object of removing the difficulties complained of. He trusted that under these circumstances, and pending the adoption of the arrangements for the tenure of land by foreigners contemplated

in the President's proposal with regard to jurisdiction, the means of accomplishing the objects common to both parties would more easily be attained than by the formation of a separate foreign settlement at that port.

Mr. Tricou was of the same opinion as Sir Harry Parkes, that the best means of remedying the state of things which had been pointed out at the port of Niigata, would be to establish at that port a foreign concession on the model of those which existed already at the open ports. It ought not for an instant to be supposed that the Government which had made declarations of so liberal a character with regard to the opening of the country, cherished the idea of putting obstacles in the way of the establishment of Europeans in a port already opened to foreigners.

In regard to the memorial on the subject of municipal government laid upon the table by Sir Harry Parkes at the meeting of the 15th June, Mr. Shioda said that he was very glad to receive it, as he was always ready to recommend any useful suggestions or opinion calculated to improve the general condition of the foreign settlements in any manner within the scope of the present Treaties. He had already caused a translation to be made and sent to the Minister of the Interior and the Prefect of Kanagawa as the authorities most directly concerned in the question, and also to the members of the Cabinet.

Sir Harry Parkes thanked Mr. Shioda for having taken these steps, and in regard to the supplemental memorial he wished to observe that he knew that the Prefect of Kanagawa was held in high esteem by the foreign residents of Yokohama, and he thought it desirable that the latter should be allowed to hold direct communication with the Prefect on this subject. He hoped that if the Japanese Government did not see their way to taking the necessary measures for the supply of pure water to the foreign settlement, they would permit the memorialists to undertake the required works on their own account.

Mr. Shioda replied that the matter was under consideration, and that he expected shortly to be able to give a reply to Sir Harry Parkes apart from the deliberations of the Conference.

Mr. Shioda announced that the President, Mr. Inouye, expected to be able to attend a meeting of the Conference on the following day, for the purpose of discussing the question of the duration of the proposed new Treaties.

Sir Harry Parkes remarked that as the meetings of the Conference were drawing to a close, he thought that a clear understanding should exist as to the work assigned to the Tariff Committee, which had still to continue its sittings. That work consisted of the completion of the Tariff, the examination of the Drawback and Bonded Warehouse systems and the revision of the Trade Regulations attached to the Treaties. He wished to bring to the notice of the Conference, on the part of the members of the Committee, two points on which they found it necessary to request instructions:—

1°. Is the Committee authorized—when all the valuations of imports now being made shall have been completed—to determine what articles shall pay specific and what articles *ad valorem* duties, and in the case of specific duties shall the Committee calculate and fix the rate of duty on each article?

2°. It has been represented to the Committee that the question as to whether

a Drawback or a Bonded Warehouse system should be adopted must be greatly influenced by the nature of the Tariff. In view of the confidential character of the proceedings of this Conference, the Committee were not at liberty to communicate the draft Tariff to the foreign mercantile community from whom they have to seek opinion on the subject of Drawbacks and Bonded Warehouse. They wished therefore to be instructed as to whether they might show the Tariff to those mercantile men whom they had to consult on this subject.

Mr. Zappe was of opinion that it would be preferable not to communicate the whole Tariff, and that it would be sufficient if the Committee were empowered to state that the Tariff was based on an average of ten per cent, with certain exceptions.

Sir Harry Parkes observed that it would be necessary in that case to state that kerosene and sugar were included in those exceptions, as these two articles were largely concerned in the question of storage, either under a Drawback or Bonded system.

It was unanimously agreed that the Tariff Committee might define what articles should, in their opinion, be subjected to specific, and what articles to *ad valorem* duties, and in case of specific duties that they should name the rate to be levied on each article. Also, that they might make known, when they found it necessary to do so, that the Draft Tariff was framed on a basis of 10% with certain exceptions.

Sir Harry Parkes announced that he would take an opportunity at the next meeting of asking the President if he were disposed to take into consideration the amelioration of the conditions under which foreigners were allowed to travel in the interior, and the removal of the illegal combinations against the freedom of trade which was secured by the Treaties to foreigners.

In connection with the subject of the fraudulent use by Japanese subjects of foreign trade marks, introduced by the French Delegate at the meeting of the 15 June 1883, Sir Harry Parkes read a letter from a firm of British merchants complaining of a recent case of this class, and suggested that it might be annexed to the protocol.

The Italian Delegate desired to remark that similar complaints had been addressed to him by Italian merchants at Yokohama, especially concerning vermouth.

The Meeting adjourned at half past four o'clock.