

relative to the termination of the Treaties, subject to verbal alteration.

"The present Treaty shall come into force immediately after the exchange of the ratifications. In order that the two Contracting Parties may have the opportunity of hereafter treating and agreeing upon such modifications or other arrangements as may tend to the improvement of their mutual intercourse or to the advancement of the interests of their respective subjects, it is agreed that at any time after the termination of (eight years or twelve years as the case may be) either of the Contracting Parties may give to the other party notice of its intention to terminate articles.....of the present Treaty or to terminate the Treaty as a whole, and that at the expiration of twelve months after the date of such notice, the said articles (if such notice shall have reference only to said articles) or the present Treaty (if such notice shall have been to that effect) and all the stipulations contained therein shall cease to be binding on the two Contracting Parties."

The foreign Delegates agreed to lay the foregoing before their respective Governments.

The President having now exhausted all the remarks he intended to make on the subjects of Treaty revision, requested the Foreign Delegates to bring before the Conference any questions they might desire to discuss. Owing to the lateness of the hour it was agreed to adjourn the Conference until the 27 inst., when the President would present a résumé of the proposals of the Japanese Government.

It was also agreed that the Conference should then close until the views of the Foreign Governments on those proposals should be known.

The meeting terminated at five o'clock.

## PROTOCOL No. 16.

MEETING OF JULY 27, 1882.

Present ;  
 For Japan,  
 Mr. Inouye Kaoru ;  
 For Austria-Hungary,  
 The Chevalier Hoffer von Hoffenfels ;  
 For Belgium,  
 Mr. C. de Groot ;  
 For France,  
 Mr. Arthur Tricou ;  
 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 Lanciare ;  
 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.

The sitting opened at half past nine o'clock in the forenoon.

In reference to the Treaties named by the President in the last Protocol as having been made by European States with Persia, Sir Harry Parkes wished to remark that the Treaties between Persia and Great Britain were not terminable and that they contained much more liberal conditions than the Treaty between Great Britain and Japan. He also begged to point out that the duration of one of the Persian Treaties named by the President (that with Austria-Hungary) was for twenty-five years. Also that in the Declaration signed by six Great Powers at London in January 1871 it was recognized as "an essential principle of the law of

"nations that no Power can liberate itself from the engagements of a Treaty nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement."

The President in reply stated that the Treaty between Prussia and the Zollverein on the one part and Persia on the other of 1857 was of eight years duration and between the United States of America and Persia was of ten years duration. He also acknowledged the justice of the principles invoked by Sir Harry Parkes, but believed that they did not in any wise preclude the proposal that an agreement should be come to between the High Contracting Parties to insert a termination clause, such as he proposed, in the revised Treaties. Japan had never intended nor had his proposal the tendency to liberate his Government from its Treaty obligations or to modify the stipulations of the present Treaties unless with the consent of the Contracting Powers by means of an amicable arrangement, and it was on this account that the Imperial Government proposed to introduce into the new Treaties, by consent of the Contracting Parties to each Treaty, a termination clause, and he could only repeat that Japan would make use of this right in conformity with the principles of modern international law.

Sir Harry Parkes remarked that at a previous meeting he had promised to make some observations on the present passport system under which foreigners were permitted to travel in the interior and upon illegal restrictions on foreign trade. To save time he had put his remarks into the form of memoranda, which he would now, with the permission of the Conference, proceed to read:

## MEMORANDUM ON PASSPORTS.

The practice adopted by the Japanese Government in issuing passports to foreigners travelling in the interior is opposed to that of Western Nations, and is productive of delays and annoyances which serve no useful purpose. Instead of putting their visé on passports issued by the Authorities of the foreigner concerned, the Japanese Government require to issue every passport for the interior themselves, the application in every case has to be made by a Foreign Minister, and every passport is issued by the Japanese Minister for Foreign Affairs. Thus a foreign resident or a foreign traveller arriving at Nagasaki and wishing to enter the country from that point must communicate with his minister at Tokio, distant 800 miles, and the Minister having obtained the passport has to forward it to Nagasaki. In such a case a delay of from 2 to 3 weeks must be incurred.

But the passport will not be issued unless the applicant declares that he goes into the interior solely on the ground of health or scientific research.

This declaration is very embarrassing to many conscientious persons who wish to travel for other purposes which are quite as proper and harmless as the two named. Thus some persons desire to travel simply for pleasure; some to see the country and become acquainted with the people and their customs; some for the study of the Japanese language and exercise in it; some to obtain information respecting the productions, industries and resources of the country; and some to visit friends or to

give instruction to Japanese. Is it reasonable, is it in consonance with the spirit of progress which animates the Japanese Government in other respects that foreigners should be interdicted from going into the interior for such purposes as those above named?

Under the present rules the applicant is also required to declare the route he intends to travel by, although this must be difficult and sometimes impossible to a foreigner unacquainted with the country. The passport must be renewed after every journey, however short, and a return to an open Port is held to complete a journey.

When in the interior the holder of the passport is continually subjected to serious annoyance by the rule which requires him to produce it to any local official or policeman who may require to see it, and to show it to the landlord of any inn at which he may lodge. From one to four copies of it have then to be made by the innkeeper and to be furnished the same day to the nearest police station. Thus in the Yamanashi prefecture the number required is four or five, in other places two, but in all places at least one. The nearest police station is frequently five miles, sometimes ten miles distant. I can quote a case in which the innkeeper besides making these copies was also required to obtain the counter signature of the mayor two miles distant in one direction, before carrying the documents five miles in another direction to the nearest police station. As this system causes a great deal of unnecessary trouble and annoyance to innkeepers, the latter frequently refuse to receive foreigners. I know of an instance in which accommodation has been refused at all the inns in a village on this account, and the explanation above given is repeatedly assigned by the innkeepers as the cause of such refusal.

The only use of a passport is either to enable a foreigner to be identified in case of complaint being made against him or to enable the foreigner to prove his identity to the Local Authorities in case he has to claim their protection. For the first named purpose it would be quite sufficient if, in ordinary circumstances at least, the name of the foreigner and his place of origin were inserted in the innkeeper's traveller's book as is the case with Japanese.

It is suggested that passports should be obtainable at each of the Treaty Ports; that they should be issued by the consuls and viséd by the Local Authorities; that in the case of residents in the country, they should be available for a year during which time the holders should be allowed to come and go at pleasure, and that the latter should be required to make no declaration as to the object of their travel.

In China passports have been granted to foreigners for more than 20 years past on much more liberal terms than those now suggested, and it is unnecessary to remark on the freedom from all restriction which Japanese subjects enjoy in Western States, not only for purposes of travel but for all other legitimate objects.

In reply to the observations of Sir Harry Parkes on the subject of passports the President said that by the existing Treaties the movements of foreigners were confined within certain specified limits. And by Article III of the Austro-Hungarian Treaty those who transgressed these limits were liable to a fine of a hundred Dollars. The Japanese Government, however, in compliance with the generally expressed wishes of the Foreign Community, and being desirous of manifesting their liberal disposition towards the Foreign Powers, had granted to all foreigners

(under a system of passports, or rather permits) the privilege of travelling in the interior beyond the Treaty limits for the purpose of benefitting their health or for scientific investigation.

The Prefects of the open Ports were authorized to issue these so-called passports within the more immediate neighbourhood of the Ports: but foreign travellers desiring to travel more extensively from place to place, must obtain passports issued by the Department for Foreign Affairs. Persons availing themselves of this privilege were in all cases interdicted from entering into any commercial transactions of whatever nature. These were the grounds and the conditions upon which permission to travel in the interior had been granted by the Japanese Government and from which he trusted the Foreign Governments would easily perceive the essential difference between the Japanese so-called passports granting permission to travel and the true passport system of European states which had quite different foundations and objects. If therefore there should be ground of complaint regarding the difficulties and annoyances either in obtaining passports or in observing the conditions attached to the favour thus granted, this result must be attributed to the peculiar nature of the arrangement whereby out of their desire to grant a favour to foreigners, the Japanese Government, as already stated, had voluntarily released in some measure the restrictions imposed by Treaty stipulations.

He did not however, he was happy to add, see any difficulty in making such improvements in matters of detail such as those relating to the making of copies and reports by innkeepers etc. etc. as would afford much greater facilities in practice, without however in any manner altering the principles upon which the privilege was enjoyed. For so long as the present Treaties remained in force he felt under the obligation of maintaining the existing system, and deeply regretted his inability to accede to the proposal of the British Delegate to permit the Foreign Consuls to issue passports subject to the visé of the local authorities.

As to the case of China he was not prepared to admit the case was altogether identical and as to the absence of restriction which Japanese enjoy in Western States he pointed out that, as already observed, the difference was one depending entirely upon the different nature of the Treaty obligations with respect to the exercise of jurisdiction. In conclusion he said he need scarcely add that when the general scheme for opening the entire Empire to foreigners which, as all the Delegates were well aware had been designed by his Government under the dictation of the most liberal sentiments towards the Foreign Powers, all the difficulties now complained of would be entirely obviated and would finally disappear to the entire satisfaction of all parties concerned.

#### ILLEGAL COMBINATIONS AGAINST FOREIGN TRADE.

The XIV<sup>TH</sup> Article of the Treaty between Japan and Great Britain provides that: "British subjects may freely buy from Japanese, and sell to them, any articles that either may have for sale without the intervention of any Japanese officers in such purchase or sale, or in making or receiving payments for the same: and

"all classes of Japanese may purchase, sell, keep or use any articles sold to them by British subjects."

The same stipulation appears in all the other Treaties made by Japan with Foreign Powers.

By the Protocol signed at London on the 6th June 1862 the Japanese Government undertook to remove all the restrictions which, contrary to the above stipulations of the Treaties had at that time been imposed upon foreign trade and foreign residents in Japan and which were complained of as preventing free and direct dealings between Japanese and foreigners. They then engaged among other things to specifically abolish and do away with "all restrictions whereby Daimios are prevented from sending their produce to market and from selling the same directly by their own Agents" and "all restrictions limiting the classes of persons who shall be allowed to trade with foreigners at the ports of Nagasaki, Hakodate and Kanagawa."

In the IX<sup>TH</sup> Article of the Convention of Yedo of June 25, 1866 the Japanese Government further declared that all the restrictions named in the said Protocol "have been entirely removed, and proclamations to this effect have already been published by the Government of Japan."

But restrictions similar in effect to those described above have since sprung up at Yokohama in another shape, and are now imposed, as foreign merchants allege, by the Machigwaisho, or by combinations of native merchants associated with or acting in the name of that influential body. These men engross to themselves the monopoly of the foreign trade, and as of old the Daimios' Agents were prevented by official interference from dealing direct with foreigners, so it is now the country dealers of Japan and all those who do not and cannot join the above mentioned association, who are debarred from the advantages of that direct trade, which is the right, under Treaty, of all natives and foreigners alike.

Among the regulations which the Machigwaisho enforces for the conduct of the foreign trade of Yokohama is one which requires a payment of three per mil to the Machigwaisho on all goods bought or sold, and another which makes it imperative on every person having commercial dealings with foreigners to be domiciled in Yokohama proper, that is to say within the boundary of old Yokohama comprising the four streets known as Otamachi, Bentendôri and Benten, Honchôdôri and Kaigandôri.

The latter regulation prevents any Japanese who is not a capitalist or who cannot borrow capital, from coming into direct contact with the foreign merchant, from personally selecting his own purchases, or from being satisfied that he obtains the best price for his commodities. It forces small traders to do all their business through an associate of the Machigwaisho, for no business premises can be obtained in any of the above mentioned streets for a less sum than 8000 yen, as all the houses are occupied and rents are enormously high. It is evident therefore that any trader in the interior with a capital of 4000 or 6000 yen must do all his business with foreigners through one of the established Tonyas or guilds, as more than his capital would be required to comply with the conditions of the Machigwaisho.

All the associates of that institution are bound together by rules; it fixes the

prices at which goods are to be bought and nominates the individual to make each purchase. Every transaction must be reported to it immediately. And in the negotiation of their transactions Foreigners frequently find that the associate of the Machigwaisho with whom they have to deal has knowledge of the Import Invoices which the foreign merchant is obliged to hand into the Custom House, and in which the original values of the goods are stated.

Foreigners do not assert that the Machigwaisho of to-day is an actual institution of the Government, as they believe it to be farmed out to the different Tonyas who are empowered to regulate the conduct of trade to their own benefit. But its existence is felt to be extremely prejudicial to native and foreign interests alike, as it prevents progress, confines foreign trade to one groove, limits very materially, and contrary to the stipulations of the Treaties, the classes of persons who trade with foreigners, and is well known to be the main cause of those barriers between foreigners and natives which have obstructed mutual intercourse and the mutual expansion of their common interests.

The foreign merchants are satisfied that many of the smaller Japanese traders in the interior are anxious to deal with them direct, and it is well known that the licensed dealers of Yokohama—associates of the Machigwaisho—are not principals but are simply the agents of such traders.

I respectfully submit that the responsibility rests upon the Japanese Government of putting a stop to combinations which prevent the fulfilment of their Treaty obligations and which seriously injure the interests both of their own people and of the foreigners who have settled in Japan under the faith of the Treaties. Those combinations could not exist if the Japanese Government acting upon the assurance of the President, that "in future common moral and intellectual aims as well as common practical interests will more and more unite Japan with foreign nations," were to encourage freer intercourse between their people and foreigners, and to lessen the great disparity which now exists between the privileges which Japanese enjoy in foreign countries and those which are accorded to foreigners in Japan. In Europe and America Japanese are allowed to travel, to live and to trade wherever they please and they freely exercise those privileges. It is this very advantage enjoyed by Japanese abroad which permits native monopolists to combine against the foreigners in Japan, because they can rely upon Japanese doing in foreign countries what foreigners are not free to do in Japan.

Another means of checking these combinations would be by the Japanese Government convincing their people by public notification that all persons desirous of free and direct communication and trade with foreigners at the open ports, are at perfect liberty to so trade and communicate without any interference from officials, trade guilds or any association whatsoever, and that the Government would if necessary protect them in the conduct of such business. If that belief were universally established, the commerce and industry of the country which are now stagnant and languishing would flourish and increase, and greater cordiality would spring up between foreigners and Japanese.

In one of the Memorials which I have presented to this Conference the Memorialists observe: "We are satisfied that the system of guilds and other trade

"combinations over which the Government exert no apparent control, limits the number and class of Japanese who are entitled by the existing Treaties and Conventions to enjoy free and unrestricted intercourse with us. The Japanese trading class consequently know nothing of foreign merchants except through the unjust reports circulated by those whose personal interests are best served by preventing that freedom of intercourse, social and commercial, expressly granted by their own Government. Until some means are adopted to permit us to know more of each other it is impossible that the mutual feelings of respect entertained by respectable Japanese and foreigners can be manifested and strengthened, and until that takes place we must perforce continue to regard each other with distrust, and to remain ignorant of each other's wishes and requirements."

I am afraid the truth of this description cannot be questioned and it is surely due to foreigners in fair reciprocity to remove from them disabilities to which no Japanese when abroad is subject, and to allow them opportunity to overcome the ungenerous feelings now nourished by misunderstandings and by the misrepresentations of those who reckon on the inability of foreigners to refute them by personal communication with the classes among whom they are circulated. Highly as I appreciate the liberal sentiments expressed by the President in support of the proposals of his Government to throw open the whole country to foreigners, provided that the latter are placed under native jurisdiction, I submit that this great project, which must take a very considerable time to complete and work out, should not prevent the prompt adoption of those practical remedies which are within immediate reach or the fulfilment of Treaty stipulations. I venture to think that no effort can be made too soon to bring about free and cordial relations between the foreign and native commercial classes at large, and to thereby enable the people of this country to find in an increased trade—which should be open to them all and not confined to a few monopolists—more employment for their labour, more capital for their enterprises and more freedom in their industrial undertakings.

Mr. Bingham remarked that he did not see what the subject of this memorandum had to do with the present Conference. The mention of reciprocity of treatment of Japanese and foreigners in the country of the other respectively left great room for discussion. Under existing circumstances perfect reciprocity was impossible. He protested against such subjects being introduced here, as they were merely matters of internal administration, in which the Japanese Government was entitled to exercise its own discretion; and had no connection whatever with the Revision of existing Treaties. It was impossible for the Conference to pass upon such questions.

Mr. Tricou in support of the observations of Sir Harry Parkes, expressed himself as follows: "I am obliged, like Sir Harry Parkes, to invoke strictness upon the part of the Government against the associations or syndicates which place obstacles in the way of the freedom of commerce, which is formally stipulated for by the existing Treaties. The best means, in my opinion, of forcing them to dissolve would be to authorize the foreign residents to place themselves in direct communication with the native producers and buyers and to circulate freely for this purpose in all parts of Japan, and especially in the silk districts. With this object a passport should be delivered to every foreign merchant making application therefor, bearing

upon it the words "travelling for business purposes, good for....." If a foreigner so provided were found in the actual commission of a crime or delict in the interior, he should be arrested by the local authorities and instantly "despatched to the nearest open port to be delivered over to the Consul of his nationality."

With reference to the Memorandum of Sir Harry Parkes headed "Illegal combinations against Foreign Trade," the President ventured to think that the subject as treated in that Memorandum scarcely came within the scope of a Joint Conference sitting for the purpose of arranging a basis for new or revised Treaties. He did not propose therefore to reply upon this occasion to the charge there brought against the Japanese Government of committing or permitting breaches of the existing Treaties. At the same time he wished to repudiate those charges generally, and to add that it would be as difficult and as improper for the Japanese Government as for any other to interfere with any commercial or private association established among the mercantile community with the object of protecting their mutual interests. The statement appeared to him to be of a general character and devoid of specification of actual cases, but he would be happy by means of diplomatic correspondence with the Delegate presenting the Memorandum to deal freely with the subjects therein contained, if the same were stated with greater particularity.

He ventured to think that whatever grounds existed for complaints of this nature these as well as that mutual distrust and want of cordial relations between native and foreign merchants referred to by Sir Harry Parkes would be most readily removed—by breaking down the barriers in the manner proposed by the Imperial Japanese Government in their great scheme.

He would further remark that although the Memorandum read by Sir Harry Parkes spoke of 'illegal' combinations, he thought that it was prejudging the case to apply that epithet to the combinations which were intended. Only an enquiry into the facts could decide whether they were illegal or not. Perfectly legitimate trade combinations of various kinds existed in all countries. But if on inquiry the facts alleged should be shown to be true, he would not wait for the revision of the Treaties in order to remedy them. With regard to the serious charge brought against the Custom-house officers for having violated official secrecy by communicating to Japanese merchants the particulars of the invoices of goods imported by foreign merchants, he could only reply that if this grave accusation could be proved to be true, the offenders would be visited with condign punishment. While inclined to believe that it was no more than a mere rumour, he would nevertheless be obliged to Sir Harry Parkes for a detailed statement of the alleged facts.

Sir Harry Parkes replied that combinations which caused the non fulfilment of the Treaties must be illegal, and he thought that the complaints with regard to invoices must be founded on tangible grounds, or the foreign merchants would not have shewn so much feeling on the subject. He thanked the President for promising to institute an enquiry, and asked whether he would allow that enquiry to be a public one conducted by a mixed Japanese and foreign commission. The evidence in such a case must be in a great degree circumstantial, and this could best be obtained by the examination of witnesses in public.

The President thanked Sir Harry Parkes for the suggestion of a commission,

but he considered it as much the right as the duty of his Government to institute an enquiry into the truth of these grave charges, which ought to be substantiated by facts. He would beg Sir Harry Parkes to furnish him in the first place with a confidential statement of the alleged facts, and if it proved necessary to examine witnesses in support, he would ask him to be so good as to give him an opportunity of doing so.

In reply to Mr. Tricou the President observed that he had listened with great interest to his remarks in support of the Memorandum read by Sir Harry Parkes, but that as regarded the demand for passports to be issued to French citizens permitting them to travel for purposes of trade, he would remark that this suggestion amounted to the opening of the whole country, as to which he had already made certain proposals on behalf of the Japanese Government to which for the present he had nothing to add.

Mr. Tricou replied to the President that he had not spoken of the establishment of foreigners in the interior, but of their free circulation, subject to the passport system.

The President answered that he had quite understood Mr. Tricou to be speaking of travelling only, but he could simply repeat that the indispensable condition of this concession being made was the admission of the jurisdiction claimed by the Japanese Government over foreigners in the interior.

The German Minister said he was unable to concur in the remarks of the United States Minister. The President had at the last sitting requested the foreign Delegates to bring forward any subjects to which they might desire to invite the attention of the Conference. He had likewise received complaints from German Subjects concerning the action of Trade Combinations, and he would simply here request the President to do all in his power to apply a remedy if these Combinations were illegal.

Mr. Bingham remarked that the introduction of the question of Japanese trade combinations was a surprise to him. The Protocol made no mention of it as one of the subjects to be discussed by the Conference, which was met solely to arrange a basis for the revision of existing Treaties. The proposition which the Delegates had heard had nothing to do with revision. It was an impeachment of certain Japanese officials and a request to the Government to interfere with private commercial combinations among their people. Considering that the President himself did not wish to discuss these matters at this Conference, he objected to being asked to pass on such questions. The Delegates could not constitute themselves in to a tribunal to examine into them. The President's request to the Delegates to bring forward remaining subjects was intended to have reference to such as were connected with Treaty Revision. If the Japanese Government chose to prohibit combinations among their merchants, that was their business, but did not concern the present Conference, the object of which was to arrive at a basis for the revision of the Treaties.

Sir Harry Parkes remarked that he had considered the proposal of the President relative to the employment of foreign vessels as Carriers for the Japanese and was obliged to observe that they were quite unavailable in the form in which he had

presented them to the Conference. It would be a loss of time to state in detail the modifications which would be required to render them serviceable to Japanese or foreigners, unless the President really desired to come to a practical arrangement on the subject. He would name only one point to show how unsuitable they were in principle. It was proposed that no interest in any charter should be held by foreigners either directly or indirectly. Now what was the object of the measure? It was to provide Japanese subjects with cheap and abundant means of transport for conveying their produce to available markets. The largest markets of the country were those of the open ports, because there the Japanese found foreign purchasers. A sale of native produce—say rice—might be made by a Japanese to a foreigner while the rice itself was still at the place of production, and the seller might be unable, and in many cases owing to the very limited capital possessed by Japanese he would be unable to incur the cost of chartering a foreign ship to carry it to an open port without foreign assistance. But such assistance, which it would be manifestly in the Japanese interest to obtain, is absolutely interdicted under the President's proposal.

The question really concerned Japanese interests much more largely than foreign. Japan, as the Memorials on this subject showed, is now suffering from the retarded circulation of her saleable commodities owing to restrictions on sea carriage, aggravated by the total absence of roads suitable for inland traffic connecting the producing districts with the ports from which only exportation is permitted. Owing to the prohibitions on transport it would be vain for the Japanese to bring under cultivation the large areas now lying waste, and to increase their agricultural productions because they could not convey those productions to market at a paying price. To illustrate the cost of freights on the Japanese coast Sir Harry Parkes begged to quote a recent instance in which it cost eleven dollars, seven cents, to bring a case of goods from London to Yokohama, a distance of twelve thousand miles, and ten dollars, sixteen cents to send the same case from Yokohama to Niigata, a distance of eight hundred miles, by the privileged Mitsu-Bishi Company. It had also been found impossible to bring native kerosene from Niigata to Yokohama, because the freight in Japanese vessels between those ports was as high as foreign freight between New York and Yokohama. The export of Japanese rice, if it could be conveyed cheaply to a port of exportation, might become very large, and, though a foreign market for this staple production of the country is ready to hand, it is closed by the Government to the agricultural classes. The Government employ foreign tonnage and send it to unopened ports when they wish to ship and sell rice of their own, but they will not allow their people to benefit by this cheap means of conveyance, and they thus withhold from the latter an essential stimulus to agricultural production which if freely applied would give an impetus to all branches of trade. He could only say that he hoped the President, in the interests of his own people which were more largely concerned than those of foreign shipowners in this question, would be willing to reconsider his proposals.

The President replied that the particular condition adverted to by Sir Harry Parkes was inserted owing to the desire of the Japanese Government to prevent abuses. It might for instance happen that a foreigner would arrange for a ship

being chartered in the name of his servant, and the object of the proposed regulations would thus be defeated. It was not desired to enable foreigners to carry on the coasting trade under cover of their Japanese employes. With respect to the prevailing high rates of freight along the coast, and the scarcity of cheap transport, he was glad to be able to state that the Government was about to take measures to encourage competition. He desired to inquire which parts of the proposed regulations Sir Harry Parkes would wish to see modified.

Sir Harry Parkes mentioned besides the clause already alluded to by him, certain of the clauses relating to the jurisdiction to be exercised over persons on board.

Mr. Bingham was of opinion that the foreign vessel chartered by a Japanese subject would cease for the time being to be *de facto* foreign, and might therefore come under the jurisdiction of Japan provided that the charter was not in conflict with the laws of such vessel's nationality.

The President expressed his desire to uphold the regulations as proposed, the object being to maintain the *bona fide* character of the charters, and the exercise by the local Authorities of necessary administrative control of the character named. Various evils might otherwise be anticipated. As regarded the general question, he was willing to take into consideration the objections of the British Delegate, and to meet his views as far as possible.

Mr. van der Pot desired it to be noted that he entirely concurred in the remarks of the German Minister at the meeting of the 19th inst. as to the proposed insertion of a termination clause in the new Treaties.

In reference to the President's proposals respecting Japanese seamen in Foreign ships and Foreign seamen in Japanese ships, Sir Harry Parkes remarked that the questions raised by these proposals were so essentially legal and touched on such a difficult point of international law that he himself could not answer them without reference to his Government. He would however point out that the President's proposals were obviously open to objections as they stood. Thus he proposed that "no offence wheresoever committed by a Japanese subject (serving on board a foreign ship) even in respect to discipline shall be judicially enquired of or punished by any foreign tribunal in Japan, nor shall the master be empowered while in a Japanese port to use forcible restraint against the person of a Japanese member of the crew."

He thought such a proposal as this would not be acceptable to his Government as it was contrary to the usage of nations and was also inconsistent with another part of the President's Memorandum.

The German Minister observed that the matter under discussion involved somewhat intricate points of International Law, to codify which he considered always a rather difficult and hazardous task. The same inconsistency pointed out by Sir Harry Parkes had also struck himself.

Mr. Bingham agreed with Sir Harry Parkes that it was difficult to find in any civilized country a practice of the kind objected to by him, and he could not agree to recommend the proposal to his Government as to Japanese seamen on foreign vessels and foreign seamen in Japanese vessels being declared to be exclusively within Japanese jurisdiction.

The President observed that he only proposed to apply this arrangement

pending the adoption of the general scheme relating to jurisdiction.

It was agreed that the Foreign Delegates should submit the President's proposal as it stood to their respective Governments.

The President observed that he would on a future occasion make a communication with reference to certain errata which had crept into the Annexe to his proposals on jurisdiction in Protocol 11.

In compliance with the wishes of the Conference conveyed at the meeting of 29th June—an invitation which he said only anticipated his own wishes—the President begged; before pronouncing the Conference closed, to offer a brief *Résumé* of its proceedings, in order to show in outline the results arrived at.

Prot. I. The Conference commenced its sittings at the Ministry of Foreign Affairs in Tokio, January 25th of the present year, and after making all necessary arrangements for its meetings and mode of procedure, entered upon the actual business of

Prot. II. Revision at the next meeting which was held on February 1st. At the earlier meetings of the Conference the following points were substantially agreed on:—

Prot. II. (1) In connection with Consular jurisdiction and privileges.

III. & IV. a. Merchant Consuls should exercise no jurisdiction.

Prot. V. The Delegate for Holland, Sweden and Norway and Denmark dissented but subsequently announced the intention of his own Government (Holland) to reserve jurisdiction to Consuls *de carrière*. The Belgian Delegate, his country not having been represented at the discussion of these questions, afterwards stated that he did not consider himself bound by any views expressed upon them.

Prot. XV. The Delegate for Switzerland subsequently stated that the Swiss Government wished to continue Merchant Consuls as Judges.

b. Merchant Consuls should enjoy no special privileges over other merchants in regard to travelling in the interior.

c. All Consuls should only exercise their official functions at the place for which they have received *exequatur*.

d. Consuls may themselves appoint a substitute for one month; after that time the Diplomatic Representative will officially inform the Japanese Government of the change.

e. All regular official members of the Foreign Legations and Consulates in Japan may travel freely throughout the whole country.

Prot. III. (2) In connection with matters of Civil and Criminal Jurisdiction.

IV. & V. a. It is understood that the rules of the court where a case is tried shall always apply to all persons appearing before it, with regard to costs and court fees, as well as judicial procedure generally.

b. Foreign Courts in Japan should as far as practicable be competent to adjudicate in first instance upon all civil and criminal cases arising within the sphere of their jurisdiction, irrespective of the amount involved or the gravity of the crime or offence committed.

c. The establishment of foreign appeal Courts in or near Japan was considered by the Foreign Delegates to be most desirable in principle, but not practicable for most of the Powers.

All however agreed to represent to their Governments the views placed before them by the President on this subject.

d. All foreigners and natives in Japan should be compulsorily liable to appear as witnesses before other courts as well as their own, where their testimony might be required.

e. Plaintiffs, native or foreign, may both in civil and criminal cases address their petitions or complaints to the competent court, either direct or through the medium of their own authorities.

f. All crimes and offences should if possible be tried at the place where they are committed.

g. Should there occur a lapse of jurisdiction on the part of foreign courts in the case of a crime or offence committed by a foreigner, the Japanese courts will have the right to try the case, and punish the offender in the same manner as if he were the subject of a non-treaty Power.

h. The foreign Delegates acknowledged the obligation of the Treaty Powers to provide laws (in case they do not already exist) adequate for the punishment of crimes or offences committed by foreigners against the Sovereign or Government of Japan.

(3) In connection with the Tariff.

a. An Import Tariff estimated to yield a revenue of about \$4,000,000 per annum was proposed on the part of the Imperial Government. Subsequently a Tariff calculated to yield about \$3,300,000 (or with charges about \$3,570,000), on the basis of a mean *ad valorem* duty of 10 to 11 per cent on articles of importation was proposed by the foreign Delegates (except the Representative of the United States), and this Tariff being accepted by the Japanese Government was recommended to the Treaty Powers (the United States Delegate only dissenting).

Prot. V, VI, IX, and X.

b. A joint committee was appointed by the Conference to work out the values of the imports and the charges to be added in calculating the rates of duties; also to propose the articles for which specific duties should be fixed.

(4) In connection with other matters relating to Commerce and Navigation.

a. It was agreed upon considerations of justice, that the Japanese Government should levy tonnage dues from foreign ships for the coast lights it maintains, and such an aggregate amount was named as would nearly meet the annual expense of the future maintenance of the lighthouse establishment.

Prot. VIII, IX, X, & XI.

b. The rate of the dues to be levied on foreign vessels was left to be worked out in detail by a joint committee nominated by the Conference.

c. The introduction of a system of Drawbacks and Bonded Warehouses was accepted by the Japanese Government and the Committee charged with the Tariff calculations was requested to draw up a proper Drawback system and settle a draft of the necessary regulations.

The discussion of these questions of the Tariff and other Commercial matters had been entered upon before all the subjects set down for consideration in connection with Jurisdiction and Administration had been fully dealt with. At this stage of the negotiations the Japanese Government being impressed with the conviction

that no thoroughly satisfactory solution of the great questions involved, in a manner realizing the liberal intentions of the Japanese Government towards the removal of all restrictions upon the free residence and intercourse of foreigners, could possibly be arrived at upon the basis of Consular Jurisdiction, the President declared to the Conference that in the opinion of the Japanese Government the time had arrived when a more comprehensive scheme should be proposed for settling in a liberal manner the whole question of the relations of foreigners in Japan to the government and people of the Empire.

Prot. VII.

Accordingly the President at the meeting of April 5th, read to the Conference a Memorandum expressing the views of the Imperial Government and the willingness of the latter to open the whole Empire to the subjects of all nations upon terms which the President is happy to think have not been called in question on the score of liberality. The proposals of the Imperial Government as contained in this Memorandum and a subsequent document of greater detail laid before the Conference on June 1st may be very briefly summarized as follows:

Prot. XI.

The Imperial Government declared its readiness to open the whole country to foreigners, who should be free to travel to and reside in all parts of the Empire, to acquire both real and personal property, and to carry on trade and exercise any calling under the same conditions as Japanese subjects, upon the sole condition that the laws of Japan should be binding on all alike, and be applied generally by the Japanese authorities executive and judicial.

The particular guarantees offered by the Japanese Government in regard to the laws and their application were briefly:

*a.* Laws and Regulations of the Empire, when completed on all points in accordance with the principles of modern Western Jurisprudence would be authoritatively published and translated into at least one foreign language.

*b.* The judicial application of the laws would be entrusted in part to foreign judges, engaged for the purpose by the Japanese Government.

The judges would be perfectly independent and would have proper qualifications and practical experience.

*c.* In the case of foreign defendants the foreign judges would be in the majority; or where two judges only formed a court, the foreign judge would have a casting vote.

In the case of Japanese defendants the majority or casting vote would be with the native judges.

*d.* The appeal Courts at Tokio, Ōzaka, Nagasaki and Hakodate would have 2 foreign judges each, the Cour de Cassation 3 (with the necessary substitutes added).

Courts of first instance in Yokohama and Kobe would have one foreign judge each, and one foreign justice of the peace would also be appointed at each of the two places named.

*e.* Foreign plaintiffs would have the privilege of bringing their cases (above 100 *yen*) directly to the appeal Courts.

*f.* All criminal charges against foreigners above simple contraventions would also be tried by the appeal Courts.

*g.* If at any time the jury system should be adopted by the Japanese Govern-

ment, juries would be partly composed of foreigners in cases where the defendants were foreigners.

*h.* All proceedings in the Court would be public.

*i.* Competent interpreters would always be provided.

*j.* Special and exceptional privileges would be granted to foreigners as to the appointment of counsel.

*k.* Exceptional arrangements would for a time be admitted, to afford additional security in capital Charges.

*l.* Exceptional arrangements would likewise be admitted in the treatment of foreigners sentenced to terms of imprisonment.

In regard to civil jurisdiction the following exceptional provisions were proposed:—

*a.* While cases between foreigners of different nationalities would be cognizable exclusively by the territorial courts, cases between foreigners of the same nationality might at their option be brought before their Consular court, the execution of the judgment being however reserved to the territorial courts.

*b.* Foreigners would be excepted from the application of that part of the civil law relating exclusively to personal status: such questions therefore affecting foreigners would remain with the foreign courts or Consuls, in cases where no Japanese interests should be involved.

*c.* Full liberty of conscience and the full exercise of their religion would be guaranteed to foreigners.

*d.* Foreigners, whilst liable to the same general taxes as natives would be exempt from other and extraordinary burdens: and whilst necessarily deprived of political rights, would yet have a voice in the municipal government of their former settlements.

Such was the general outline of the reforms which the Japanese Government expressed its willingness to introduce in relation to the position of foreigners at an appointed time after the ratification of the new Treaties.

It further proposed a period of transition to commence at an earlier date and to last not longer than 5 years from the ratification of the Treaties.

During this period foreigners would have the right of travelling in all parts of the country for purposes of trade, and the right of residing and holding real property within certain larger limits at the open ports or cities, and either within or without the existing limits of residence, upon the same terms as natives in respect of land-tax (or ground-rent) and local rates and taxes.

At the same time, and as a condition, all delicts committed by foreigners outside the present "Treaty limits" and all contraventions wherever committed and all civil and commercial cases in which Japanese should be interested, as well as all matters relating to real property, would be brought before the Japanese Courts.

Obedience to administrative Regulations would also be enforced by the territorial tribunals, breaches of Treaty stipulations being for this period left to the Consular Courts. All the guarantees offered in the main proposal in regard to foreign Judges, constitution and competency of the Courts etc., would apply also during this period.

The important plan of reforms, the general outline of which is here given, was favourably received by the majority of the Conference.

As the Delegates had no instructions in regard to these proposals, all the foreign Delegates agreed to lay them before their Governments as they stood, the majority expressly recommending them as a basis for revision, and only the Delegate of Great Britain wishing time to consider them before expressing his opinion.

Prot. XV. Subsequently Monsieur Tricou, the new Minister and Delegate for the French Republic, who had not arrived when this plan was laid before the Conference expressed an opinion that the scheme of jurisdiction as formulated did not offer sufficient guarantees for the good administration of justice.

Prot. XV. The British Minister also at the meeting of July 17th laid before the Conference his reasons for not agreeing with the propositions.

Prot. XII. On the 8th of June the Japanese Delegates declared that no change in the present export Tariff was contemplated by the Imperial Government.

At the same meeting it was decided that the Trade Regulations attached to the Treaties should be examined by the Tariff Committee, who should report to the Conference their recommendations for the revision of the same.

Prot. XII. On the proposition of the President the Delegates agreed to lay before their Governments the draft of a "Most Favoured Nation Clause," which the Japanese Government wished to insert in the new Treaties.

Prot. XIII. Some of the Delegates at the same time intimated certain reservations respecting Treaty obligations of their respective Governments with other Powers.

Prot. XIII. On the proposition of the Delegate of France, who was supported by other Delegates, the President declared his readiness to conclude special arrangements on the basis of reciprocity on the subject of literary and artistic copy-right, patents and protection of trade marks.

Prot. XIII. The President's proposal to come to a final agreement as to the Tariff and other commercial questions as speedily as possible, and to leave the questions relating to jurisdiction, which might require more time to consider, for subsequent settlement, was objected to by the Delegates of the United States and France.

Prot. XIV. After some discussion all the foreign Delegates declared themselves ready to submit the wishes of the President on this point to their Governments with the understanding, that the question of jurisdiction and the opening of the country was not to be regarded in any way as abandoned but would be proceeded with, as soon as circumstances should admit.

Prot. XIII. On consideration of two Memorials presented by the British and German Delegates the Japanese Government expressed its readiness to grant to foreign vessels the right to visit non-opened ports under Japanese charter for a limited time and under special conditions, which are embodied in a draft laid before the Conference. The Delegates thanked the President and promised their careful consideration of the details of the proposed measure.

Prot. XVI. The British Delegate subsequently presented the objections he had to make against the conditions, and the President after some reply promised that the details would hereafter be further considered by him.

Prot. XIII. Sir Harry Parkes put before the Conference, as being connected with Group V " XV. of the subjects appointed for discussion, ("Land Tenure and Conditions of Residence in open Ports") the question of the present municipal government of Yokohama,

the bad drainage and water supply of that place, and the defective system of land tenure in the case of foreigners at Niigata.

The question whether the new Tariff should come into force at a short or a long notice was raised by some of the Delegates, and as opinions differed it was considered advisable not to decide this point before gathering more evidence from commercial quarters.

The President laid before the Conference a short draft embodying his views on the question of jurisdiction over Japanese subjects serving on foreign vessels and foreigners serving on Japanese vessels. After some remarks on the part of the British, German and United States Ministers, all the Delegates agreed to submit the same to their Governments.

The Japanese Delegates declared that in regard to the neutrality question named in Group XII, they would prefer to treat it directly with the interested Powers.

The Japanese Delegates intimated the desire of the Japanese Government to insert in the new Treaties with all Powers a clause relating to shipwrecks, based upon the conventions on that subject already concluded with Great Britain and the United States. They also proposed that provision should be made for the observance by foreign vessels of regulations for the protection of the sea-otter and seal fisheries in the northern seas of Japan.

All the Delegates agreed to recommend these proposals to their respective Governments.

Sir Harry Parkes presented a Memorandum on the passport system and another complaining of the existence of restrictions on the trade of foreigners, to both of which, after a general discussion, replies were given by the Japanese Delegate, requesting that the latter question might be dealt with diplomatically outside the Conference.

The subject of the last Group XIII, namely duration of the new Treaties was then discussed. The President proposed that the Treaties should terminate, as to Tariff, Light dues and other Commercial matters in eight years, as to the other portions in 12 years; at the expiration of which periods it should be open to either party to remodel or terminate the Treaty. After some discussion in the course of which the President emphasized the great importance attached by the Imperial Japanese Government to this clause, whilst he declared that Japan even in case of an eventual termination of Treaties would conform to the principles of International law in its foreign intercourse, and that in no case the vested rights of foreigners would suffer, all the Delegates agreed to submit the President's proposition to their respective Governments.

The above Résumé of the proceedings of the Conference was unanimously accepted by the Delegates.

Sir Harry Parkes enquired with reference to the President's observation in the Résumé just read that no thoroughly satisfactory solution of the great measures which he proposed could possibly be arrived at upon the basis of Consular jurisdiction, whether he meant that all the proceedings of the Protocols Nos. 3, 4, and 5 which related to that jurisdiction were to be set aside.

Prot. XIII.  
" XIV.

Prot. XV.  
Prot. XVI.

Prot. XV.  
Prot. XV.

Prot. XV.

Prot. V  
" XVI.

Prot. XII.  
" XV.

The President replied that in case his proposals to bring foreigners under Japanese jurisdiction were not accepted by the Treaty Powers those proceedings would stand good as an alternative measure. And in that case all questions coming under Groups IV and V which had not been fully discussed would have to be re-considered and arranged.

Sir Harry Parkes begged also to inquire whether that part of those proceedings which related to plaintiffs having direct access to the Courts—Japanese or foreign,—with the option of the intervention of their own authorities, on the desirability of which arrangement all the members of the Conference were agreed, would at once be acted on.

The President replied that he was prepared to consider that question on its own merits apart from the business of the Conference.

Sir Harry Parkes further inquired whether he was right in believing that the consideration of the following questions would also be continued by the President independently of the proceedings of the Conference:— 1st. Municipal system of Yokohama, 2d. Building land for foreigners at Niigata, 3d. Illegal combinations against foreign trade and 4th. Charter of foreign vessels by Japanese.

The President replied that he was ready to proceed with the consideration of the first three of the above-named 4 questions out of the Conference, as speedily as possible, but the fourth he reserved as one of the questions which he wished to treat in connection with the revision of the Treaties.

The President observed that one point still remained to be determined, namely the question whether the Committees on the Tariff and other Commercial questions should be continued after the close of the Conference. For his own part he was desirous that they should be continued, if the members of the Committees themselves were willing.

After some discussion it was proposed by Baron Rosen that the work of the Committees be suspended until the answers of the respective Governments to the proposals of the Imperial Japanese Government were received.

The Delegates of Belgium, France, Great Britain, the Netherlands, Portugal, Russia, Spain and the United States voted for this proposal and those of Austria-Hungary and Italy in the negative, while the two Delegates of Germany abstained from voting.

It was held that the vote of the majority should in the present case, be decisive. Protocol No. 15. was signed.

The President then proceeded to pronounce the closure in the following terms:

He desired to say on this occasion a few words of leave-taking to the Members of the Conference with whom he had had the pleasure of being associated for nearly six months, and this desire was all the stronger, because he feared that when the Conference would meet again some of the Delegates would not be here, and he was only doing his duty as President of the Conference when he desired to place on record the high appreciation he entertained of the conciliatory and friendly character which this Conference had throughout maintained, and of the manner in which each Delegate had shown his constant readiness for the indefatigable discharge of the duty which he had been called upon to perform. He begged to tender in the name

of his Government the most sincere thanks for the able and cordial co-operation rendered by them to the laborious work of the Conference.

He would take this opportunity of acknowledging the assiduity and high ability with which the members of the secretariat had conducted the arduous work imposed upon them. He felt sure he was expressing the feelings of all Members of the Conference, as well as his own, in paying this tribute of commendation to these Gentlemen whose services had been so successfully rendered.

Pending the decision of the Foreign Governments to whom would now be submitted the propositions of the Japanese Government as well as the reports of Messieurs the Delegates they might now separate in the hope that when they should meet again they should find themselves in a position to reach a satisfactory and final arrangement for the new Treaties and thus to accomplish these objects so important to the interest of all Parties.

Sir Harry Parkes observed he wished it had fallen to some one more able than himself to reply to the President's concluding speech. He could only say that the generous estimate which the President had formed of the efforts of the Foreign Delegates applied in their opinion with greater force to those of the President. He had not only to take his share in the work of the Conference as the Representative of his Government, but on him also had devolved as President of the Conference the onerous task of directing all its labours and shaping the course of its proceedings.

As the Conference proceeded he had to frame proposals of great moment which had the most important bearing on all the foreign relations with Japan. Although in imperfect health he had persevered in his work throughout the protracted sittings of the Conference, and had never failed to treat with marked attention and with distinguished courtesy all the proposals and arguments of the Foreign Delegates. In their name he offered the President their cordial thanks for the unvarying consideration they had received at his hands.

As to the Secretariat he could only re-echo the high eulogium passed by the President on the gentlemen composing it, and to assure them that the foreign Delegates felt greatly indebted to them for their able compilation of the records of the Conference.

It remained for him to repeat the hope of the President that this Conference would lead to a satisfactory arrangement of the questions at issue, and he was supported in this hope by the knowledge that all the Governments of the Treaty Powers were animated by the desire to reconcile the requirements of the Japanese Government, as far as possible with the interests of foreign commerce and to strengthen the friendly relations which happily existed between all those Powers and Japan.

He had to add one word more, and that was an expression of regret that Mr. Shioda, the second Japanese Delegate, who had attended all the sittings of the Conference and the Committees, and who had presided on several occasions in the President's absence, was prevented by indisposition from being present at the closing meeting, and receiving the thanks which all the Foreign Delegates considered to be due to him for his very effective and assiduous co-operation.

The remaining Delegates expressed their concurrence in the sentiments ex-

pressed by Sir Harry Parkes.

The Italian Chargé d'Affaires believed that he was expressing the sentiments of the Delegates, and especially of those who were not familiar with English, in thanking Baron Alexander von Siebold for the courtesy with which he had always afforded them the enlightened and able assistance of his wide knowledge of languages.

Mr. Bingham heartily concurred in what his distinguished Colleague the Doyen had said, and would only add, what he thought must have been omitted by an oversight, namely that he hoped that when the Conference should again meet they would have the assurance of the consent of the respective Treaty Powers to revise existing Treaties upon the basis proposed by the Japanese Government.

The sitting terminated at half past twelve o'clock in the afternoon.

## PROTOCOLE N<sup>o</sup> 1.

SEANCE DU 25 JANVIER 1882.

Le Gouvernement de Sa Majesté l'Empereur du Japon et les Gouvernements des Puissances Européennes signataires des Traités en vigueur, ayant d'un commun accord reconnu qu'il serait utile de rechercher tels arrangements permettant d'arriver à une révision des Stipulations contenues dans lesdits Traités, ont résolu ce qui suit:

Les Délégués de Sa Majesté l'Empereur du Japon et des Puissances Européennes se réuniront à Tokio dans des Conférences préliminaires ayant pour but, dans un sentiment de conciliation et d'amitié, de déterminer, sous la réserve de la sanction de leurs Gouvernements, les bases sur lesquelles on pourrait stipuler toute modification utile et pratique des Traités existants.

La Conférence s'est réunie pour la première fois au Ministère des Affaires Étrangères à Tokio, le 25 Janvier 1882, à trois heures de l'après-midi.

Étaient présents:

Pour le Japon,

Son Excellence Monsieur Inouye Kaoru, Ministre des Affaires Étrangères,  
Monsieur Shioda Saburo, vice-Ministre Adjoint des Affaires Étrangères;

Pour l'Allemagne et la Suisse,

Son Excellence Monsieur de Eisendecker, Envoyé Extraordinaire et  
Ministre Plénipotentiaire et, comme second Délégué d'Allemagne, Monsieur Zappe, Consul Impérial;

Pour l'Autriche-Hongrie,

Monsieur le Chevalier Hoffer von Hoffenfels, Ministre Résident;

Pour l'Espagne,

Monsieur le Chevalier Don Luis del Castillo y Trigueros, Chargé  
d'Affaires;

Pour la France,

Son Excellence Monsieur Guillaume de Roquette, Envoyé Extraordinaire  
et Ministre Plénipotentiaire;

Pour la Grande-Bretagne,

Monsieur J. G. Kennedy, chargé d'Affaires;

Pour les Pays-Bas, la Suède et Norwége et le Danemark,

Monsieur J. J. van der Pot, Ministre Résident;

Pour la Russie,

Son Excellence Monsieur C. de Struve, Envoyé Extraordinaire et Ministre  
Plénipotentiaire;