

加州土地法問題公文書發表ニ関シ最モ激烈ナル意見ヲ掲ケタル東京日日新聞ハ閣下ノ所有新聞ナル旨在日米國大使ヨリ當國其筋ヘ申来リタリ旨内聞セルニ付七月二日國務長官ニ面会ノ節夫レトナク右ノ誤謬ヲ訂シ置キタルモ為念申進ス

五 日本政府ノ第四回抗議

六七 十月二十六日 加藤外務大臣ヨリ
在米國珍田大使宛

加州問題ニ関スル六月二十三日附國務長官ノ
書翰ニ対シ日本政府抗議ノ書翰案送付ノ件

附屬書 右日本政府抗議ノ書翰案

通機密送第七三号

加州土地法問題ニ関シテハ去六月十日米國政府ニ対シ我政府ニ於テ協約ノ商議ヲ繼續スルノ意ナキ旨ヲ通告スルト同時ニ該商議以前ノ交渉ニ復帰シ昨年八月二十六日貴官ガ「ブライアン」氏ニ手交セラレタル書翰ニ対スル回答ヲ期待スル旨申入候処之レニ対シ同國務長官ヨリ去六月二十三日

タルモノニ無之候様思料候ニ付可成枝葉ノ小議ヲ避ケ大本ノ趣旨貫徹ニ力メ度存念ニ有之候就テハ素ヨリ今次更ニ一回ノ抗議ニ由リ直チニ米國政府ヲシテ從來ノ非ヲ悟リ翻然其態度ヲ改ムルニ至ラシムルノ効果ヲ予期スルコト能ハサル儀ニ有之候得共兎モ角前陳ノ希望御諒知ノ上可成之レニ由リテ米國政府ノ反省ヲ促カシ得ル様精々御尽力相成度此段申進候也

追テ日独開戦前後公務特ニ多端ノ為メ本件ノ重要ナルニ拘ラズ回答大ニ遅延相成候次第可然國務長官ヘ御申入相成度候將又本件ハ今日ノ場合ト相成單ニ別紙ノ如キ文書ノ往復ニ由リテ其解決ヲ期シ難キコト言フヲ俟タザル次第ニ付該解決法ニ関シテハ当方ニ於テモ十分講究ヲ進行可致咎ニ有之同時ニ過日来電信ヲ以テ御報告相成候新協約案其他ニ関スル御意見等亦篤ト考查可致猶ホ本件ニ付貴見アル所ハ委曲隨時御來報相成候様致度候得共從來ヨリノ行縣モ有之候ニ付兎モ角別紙書翰ハ此際遲滞ナク米國政府ヘ御送附相成候様致度為念此段申添候也

(附屬書)

六月二十三日附國務長官ノ書翰ニ対スル日本政府抗議ノ

附ヲ以テ右昨年八月二十六日ノ書翰ハ同年七月十六日附同長官ノ書翰及同追加覺書ニ対スル十分ノ回答ト認ムルコト能ハサルニ付先ツ該書及覺書ノ論旨ニ対シ帝國政府不同意ノ点ヲ詳示被致度旨申越相成居之レニ対シテハ未タ我政府ニ於テ更ニ抗議ノ運ト相成不居候儀ハ御承知ノ通ニ有之候爾來當方ニ於テモ本問題ノ善後策乃至將來在米本邦人ノ一般利権保護ニ関スル研究ヲ懈ラズ多少ノ議案モ無之ニアラサレトモ未タ其採定実行ノ確定ヲ見ルニ立到難キ場合ニ有之候然ル処前記去六月二十三日附國務長官ノ照会ニ対シテハ帝國政府ノ云ハント欲スル所ハ已ニ從來ノ抗議ニ尽シ居候事項ニ外ナラズ唯タ之レヲ反復敷衍スルニ過ギズ候得共兎モ角回答ノ必要有之候ニ付當方ニ於テ同長官宛書翰案別紙ノ通作成ノ上及御送附候案御査閱相成度候若シ該案中字句其他ニ於テ妥當ナラサルモノヲ被認候得ハ提出前適宜多少ノ改竄修正ヲ加ヘラレ其旨直チニ當方ヘ御報告相成候テモ不苦候得共大草案ノ通り御回答相成候様致度候

別紙所陳何等格段ノ新説モ無之多クハ已述ノ論旨ヲ以テ先方ノ弁議ヲ反駁スルニ不過候得共議論徒ラニ多岐ニ亘リ却ッテ其本末ノ錯綜ヲ招致スルモ亦決シテ本件解決上策ノ得

書翰案

Sir,

The contents of your note under date of June 23rd last and relative to the question of the Alien land tenure in the State of California have duly been communicated by me to the Imperial Government.

In that note you have been good enough to inform me that the United States Government concur in the proposition of the Imperial Government to terminate negotiations looking to the conclusion of a convention on the lines of the project which has been under discussion. With regard, however, to the expectation of the Imperial Government to receive a reply to the note which I had the honour of delivering to you on August 26th 1913 I understand that it is the opinion of the United States Government that your note and Aide-Mémoire of July 16th 1913 remain, as yet, substantially unanswered, and therefore, that a reply to the same should be forwarded by the Imperial Government, so that, you may be advised as to the contentions advanced by the documents to which the Imperial Government take exception.

I may here mention that pending the aforesaid negotiations for the conclusion of a convention an immediate answer to my note of August 26th 1913 may not have been regarded as essential by the Imperial Government, but now that the negotiations have been brought to a termination they deem it imperative that the question at issue may further be discussed to the end that a solution satisfactory to both parties may be reached at as early a date as possible.

Although, it is true, certain reservation has been made in the telegram of Baron Makino to me, transmitted to you on August 26th 1913, I should have considered that the attitude of the Imperial Government towards the statements contained in your notes of July 16th 1913 has been made substantially clear to the United States Government. In view, however, of the opinion expressed in your note of June 24th last I am now instructed by Baron Kato, Minister of State for Foreign Affairs, to reiterate the contentions of the Imperial Government and to bring to your notice more fully the following observations upon your recent

communications.

In the opinion of the United States Government that the California Enactment is not indicative of a national discriminatory policy the Imperial Government gladly concur, for they have at no time regarded the question in that light as has been pointed out by Baron Makino in his telegram to me sent on August 23rd 1913. At the same time, however, the incentive which prompted the measure and the circumstances which culminated in the legislation are of so apparent a nature that there seems to be no denial of the fact that the enactment was an outcome of a local policy of discrimination against Japanese subjects qua Japanese subjects, and that it was a manifestation of racial antagonism. Although, no doubt, pains have not been spared to avoid a positive expression to that effect this phase of the law is of an evident character and the fact that the statute has been aimed at my countrymen is very thinly veiled and even is widely admitted. In this connection I may refer to the telegram which, I am informed, the President has forwarded to the Governor of California on April 22nd

1913 and which contains the following passage:

"If they (the people, the Governor and the legislature of California) deem it necessary to exclude all aliens who have not declared their intention to become citizens from the privileges of land ownership, they can do so along lines already followed in the laws of many of the other states and of many foreign countries, including Japan herself. Invidious discrimination will inevitably draw in question the treaty obligations of the government of the United States. I register my very earnest and respectful protest against discrimination in this case." Without expressing any views on the proposition contained in this message one can clearly conceive the opinion of the President himself on the character of the legislation.

The Imperial Government are unable, likewise, to sympathise with the contention offered in extenuation of the statute that the act is the emanation of economic conditions. The number of my compatriots, as well as the area of land, affected by the new law, is so very trivial and inadequate that the actual facts appear to the Imperial Government neither to confirm

the existence of such conditions nor to warrant the necessity for such legislation, in view, especially of the fact that since the enforcement by the Imperial Government of their policy of regulating labour emigration to the United States the Japanese population in this country has shown a conspicuous decrease. Moreover, even granted that such conditions should actually exist in California, the same may undoubtedly be said of other nationalities finding home in that state and the Imperial Government are still unable to associate themselves with the view that they constitute a just ground for such an invidious discrimination and the wholesale exclusion of Japanese landowners.

In this connection your recent note calls attention to the existence in Japan of the Imperial Ordinance No. 352 promulgated in 1899. The Imperial Government, however, fail to find any precise analogy in this and in the act of California. Under the Ordinance, as is provided by the article quoted in your note, the liberty of residence is extended to the subjects or citizens of the powers who are not entitled to that freedom by virtue of treaty. The purport of the law

is to grant a privilege hitherto denied, not to rescind it; and the permission granted is general in its application, the prohibition being limited only to a specific case. Your note draws attention to the relation of this Ordinance to Chinese subjects in Japan. The position, however, of the latter under the existing treaty between Japan and China differs materially from that of Japanese subjects in this country under our present treaty, so that, in the absence of the Ordinance in question no Chinese subjects in Japan would have had any right to the freedom of residence as enjoyed by the subjects or citizens of other nations. The effect of the Ordinance was to extend to them this privilege and, therefore, in this respect the law is quite the reverse to that of the California Statute which deprived Japanese subjects of rights hitherto possessed.

Commenting on the remark in my previous note on the present subject that the California Statute is contrary to the letter and spirit of the treaty and is at variance with the accepted principles of just and equal treatment, your note declares that "while it is readily conceivable that a question of treaty right and

a question of fair and equal treatment may co-exist, yet, if the matter under consideration has by the contracting parties been made the subject of an express adjustment and agreement it is hardly open to either party thereafter to say that the reciprocal measure of treatment which they have voluntarily concurred in establishing is not just and equal." With due respect to the principle professed by this assertion you will permit me to state that at the time when the Treaty of 1911 was under negotiation between the two Governments such a situation as has been created by the California legislation has never been anticipated, and no arrangement has been made to meet the exigencies of the case, so that, we are now confronted with a question for which there are no adequate provisions. It is true that every nation has her freedom of domestic legislation in matters that are not expressly stipulated in her treaties with other powers. However, in the exercise of this right it is generally deemed necessary, where friendly nations are concerned, to practice moderation, so as to maintain the principle of mutual respect, to promote the relations of recip-

rocal interest and not to defeat the very aim and design of the treaty itself. With regard to the negotiations which terminated in the Treaty of 1911, and to the note of Viscount Uchida dated February 21st, 1911, referred to in your note, the adjustment of the alien land tenure has no doubt been left, with tacit mutual confidence, to the judicious consideration as well as the sense of equity of each contracting party. Although neither nation was then desirous of entering into a categorical treaty stipulation on this subject, the absence of such an agreement was certainly not intended to accord to either party an opportunity to enact laws the effect of which would be incompatible with the aim and design of the treaty itself, Japan entirely relying in this respect upon the justice and impartiality of the United States. The aforesaid note of Viscount Uchida was given at the instance of the United States Government and it is a source of disappointment to the Imperial Government now to find that the liberal terms of the assurance therein contained, instead of being appreciated, as it was desired, are being employed in extenuation of the California Statute of which invidious discrimination is the prin-

icipal feature. In offering the aforesaid assurance to the United States Government, the Imperial Government were certainly aware of the existence in some states of the Union of the laws denying to all aliens the privilege of land ownership, but it was beyond the contemplation of the Government that the Japanese nation as such might be excluded from this privilege enjoyed by other powers having with the United States treaty relations or otherwise.

With regard to the question of naturalization fundamentally speaking it should no doubt be considered as a political problem which concerns each individual nation, but when, as in the present case, the question is employed as a means of enforcing a discriminatory measure practically directed against one particular nation it must necessarily assume an international aspect. Despite Statements to the contrary the formula adopted is clearly of California origin and in no other state of the Union is liberty to own land made to depend upon capacity to acquire American citizenship. Historically examined, as your note points out, there is no doubt whatever that no discrimination

is being employed in extenuation of the California Statute of which invidious discrimination is the principal feature. In offering the aforesaid assurance to the United States Government, the Imperial Government were certainly aware of the existence in some states of the Union of the laws denying to all aliens the privilege of land ownership, but it was beyond the contemplation of the Government that the Japanese nation as such might be excluded from this privilege enjoyed by other powers having with the United States treaty relations or otherwise.

against the Japanese nation was ever intended either by the framers of the constitution or by the authors of the subsequent amendments, and this very fact in itself should, it seems to me, dissuade the American legislators of the present time from availing themselves of the non-explicit terms of the laws for the purpose of inflicting a stigma upon a friendly nation.

It is a matter of satisfaction to the Imperial Government to learn that your Department conforms to the principle, as state in my Aide-Mémoire of June 4th 1913 that where a right is once vested by treaty or by any other law it remains preserved even if the treaty or law which created such a vested right should cease to exist.

Refuting, however, the contention in the Aide-Mémoire that the ownership of property carries with it full right of alienation your Aide-Mémoire of July 16th 1913 asserts that a vested right of ownership would not be impaired by a change in the law denying alienation to all aliens or to particular classes of aliens, and that my contention, if correct, would render it impossible for a country to alter its laws con-

matter of the alien ownership of land. At the same time, however, a concession even more generous in character than this treatment is accorded by the United States to the subjects or citizens of some other powers; for by the treaties with these nations the United States offers to their subjects or citizens a similar treatment in this respect as to her own citizens. Moreover, the laws of a majority of the States of the Union permit aliens to own real estate independently of treaty stipulations. The assertion, therefore that the subjects or citizens of countries not having treaties with the United States containing a most favoured nation clause or special stipulations on the subject of land tenure are excluded from the enjoyment of landownership, does not tally with the actual position of aliens in many states of the Union including California herself where, save the restriction under the new law, all aliens are permitted to own land even in the absence of any treaty stipulations whatsoever, as provided by Section 671 of the civil code of California which contains the following words: "any person, whether citizen or alien, may take, hold and dispose

cerning the transmissin of property. The soundness of this argument would seem to be dependent upon the justice of such an alteration in the law. A significant distinction must exist between the case where the charge is general and where it is specific in its application. The stipulations in the treaties between the United States and other Powers, referred to in your Aide-Mémoire, providing for the sale of land and the withdrawal of the proceeds would seem to apply to cases where the disqualification to succeed to real estate by reason of alienage is universal to all foreigners alike. Instances may not be lacking where no impairment of a vested right of ownership may take place in consequence of a modification of the law concerning transmission, but the position of the case would be quite different where, as in the present instance, the prohibition is directed against a particular race or nation so as to deprive ex-industria their right of ownership of the liberty of alienation by reasonable methods known to the law.

Your Aide-Mémoire correctly asserts that only to a few nations the United States Government have conceded the most favoured nation treatment in the

of property, real or personal, within this state."

In my Aide-Mémoire I have referred to an instruction given by the Secretary of State to the American Minister in Mexico in 1879; to a resolution of the House of Representatives in 1911 calling for the termination of the Commercial Treaty between the United States and Russia; and to an instruction given by the Department of State to the United States Minister in Brazil in 1875. Your Aide-Mémoire favours me with full detail in explanation of the cases thus cited, and informs me that the remonstrances of the United States to the foreign powers concerned, on the occasions in question, have not had the results as desired by the United States Government. Whilst appreciating the information which you have been good enough to accord me I am of the opinion that further discussion on the various phases of these cases would neither be wise nor necessary. I will, therefore, content myself by stating that in citing the above mentioned cases my Aide-Mémoire has merely essayed to point out that in questions of a more or less analogous nature the United State herself has held the

same views and has maintained a similar attitude towards foreign powers — a fact which is confirmed by the information contained in your communication. No matter how the representations of the United States Government may have been received by the other nations concerned, whatever may have been the results of their remonstrances, the fact remains that the United States Government have always upheld their views and have maintained their attitude.

It is a matter of great regret to the Imperial Government that they are compelled to own their sense of disappointment to find in the communications so far received from the United States Government, little that appears to answer in a fundamental manner to the main complaint of the Imperial Government, so as to shake their original convictions which dictated the present protest, namely, that the new California statute is invidiously discriminator against the Japanese nation, that it is contrary to the letter as well as spirit of the existing treaty and is incompatible with the sentiment of amity and friendship which has always characterized the intercourse

between our two nations. The question at issue, although of a serious and far reaching nature is not in its essential aspect of an intricate character, and the Imperial Government are satisfied that the case has been fully set forth in their notes to the United States Government, and they deem it unnecessary to elaborate their representations to a greater extent than they have already urged.

The Imperial Government appreciate the propitious offer of the United States Government that they would stand ready to compensate any subject of Japan whose property rights might have been impaired by the operation of the statute and that in case any Japanese subject should institute a litigation in the courts of the United States for the defence of his rights the United States Government would tender their good offices to secure the prompt and efficacious determination of his suit. Unfortunately, however, the present question is one which affects all the subjects of Japan, as a nation, so that, quite independently of the facilities and privileges which individual members of the Japanese community in California may enjoy, they must naturally

look to the central administrative authorities of the two governments for the adjustment of the question, as it concerns them in its international aspect. The Imperial Government are compelled to consider that the courses suggested by the United States Government would neither be adequate nor meet the exigencies of a case such as the present and they deem it their duty once again to assert their view that in questions of this nature the diplomatic channel is the only proper course through which a satisfactory solution of the controversy may fitly be attained. Whilst, therefore, the Imperial Government are aware of the existence in the political system of the United States, certain constitutional difficulties they must look to the Federal Government of this country for the adjustment of the pending question, welcoming in this respect the denial in your note dated July 16th. 1913 of the suggestion that the question of alien ownership of land in the States is beyond the reach of the treaty making power.

In bringing to a termination the negotiations for the conclusion of a convention, the Imperial Govern-

ment have been actuated by the opinion that the project, as it then stood, would compose in no wise the existing misunderstandings. Our first mutual concern, it appears to the Imperial Government, should be to ameliorate the present situation in California created by the unfortunate legislation, and then to guard against all possible future troubles of a similar nature. The task may not be facile one but the Imperial Government repose too much confidence in the integrity and judgment of the American Government to entertain any doubt that means of the solution of the question may be found. It is, therefore, the earnest hope of the Imperial Government that a response to this note may be forthcoming in which the United States Government will express their concurrence with the views herein contained and will advocate a course which will have the effect of relieving the difficulties. Meanwhile the Imperial Government deem it to be a matter of grave importance that no efforts on their part as well as on that of the United States Government should be spared, to meet the question with entire rectitude, and to prevent any possible future complications

which might arise and result in perplexing the situation and aggravating the susceptibilities of the two nations.

六八 十月二十八日 加藤外務大臣ヨリ
在米国珍田大使宛(電報)

帝國政府ノ抗議郵送ノ旨通報ノ件

第二九五号

往電第二八五号末段帝國政府ノ抗議ハ去二十六日加奈太丸便ニテ郵送セリ

六九 十一月十九日 在米国珍田大使ヨリ
加藤外務大臣宛(電報)

日本政府抗議ノ書翰提出日取ニ関シ報告ノ件

第四二八号

貴電第二九五号ニ関シ十月二十六日附通機密送第七三三号貴信十一月十八日接受然ルニ目下國務長官不在十一月二十四日頃帰来ノ筈ナルニ付其帰来ヲ待テ直接同官ニ手交スル方可然ト思考ス右ニ御含アリタシ

七〇 十一月二十日 加藤外務大臣ヨリ
在米国珍田大使宛(電報)

日本政府ノ抗議書寫桑港領事ヘ送付方ノ件

第三二二号

貴電第四二八号ニ関シ御手交済ノ上ハ直ニ電報アレ尚該抗議書寫桑港領事ヘ送附シ置カレタシ

七一 十一月二十二日 在米国珍田大使ヨリ
加藤外務大臣宛(電報)

日本政府抗議ノ書翰案文修正ニ付請訓ノ件

別電 同日珍田大使発加藤外務大臣宛電報第四三四号

右修正箇所

第四三三三号

十月二十六日附通機密送第七三三号書翰案文中別電第四三四号ノ通修正然ルヘキカト存スル箇所アリ尚「コムマ」句切及頭文字ノ使用ニ付本使ノ裁量ヲ許サレタシ折返し御回訓ヲ仰ク

(別電)

十月二十二日珍田大使発加藤外務大臣宛電報

日本政府抗議ノ書翰案文中ノ修正箇所

第四三四号

第二頁八行 I should have considered ニテハ個々ノ否定ヲ意味スルヲ以テ I should consider ニ改ム第四頁七行八

行 trivial and inadequate ヲ small 第五頁一行二行 analogy in this and in the Act of California ト analogy between this ordinance and the Act of California ニ改ム第九頁二十四行 universal to all foreigners alike ヲ universal affecting all foreigners alike ニ改ム第十頁五行 to deprive ノ次ニ Them, ex-industria ノ次ニ of ヲ挿入ス第十二頁十九行 and ト is トノ間ニ that it ヲ挿入ス第十四頁七行 Note dated ヲ aide-Mémoire of ニ改ム

七二 十一月二十三日 在米国珍田大使ヨリ
加藤外務大臣宛(電報)

日本政府抗議ノ書翰案文中ノ修正箇所ニ関スル件

第四三五号

往電第四三四号ニ関シ第十頁五行六ノ意義ニ就テハ当方ニ於テ誤解ヲ懷ケルコト判明セリ依テ右ニ関スル修正ハ二個所共取消ス尚第四頁十五行 should ハ do ト改ムヘキモノナリト思考ス

七三 十一月二十五日 加藤外務大臣ヨリ
在米国珍田大使宛(電報)

日本政府抗議ノ書翰案中ノ修正箇所承認ノ件

第三二八号

貴電第四三三三号第四三四号第四三五号ニ関シ全部御意見ノ通取計ハレタシ

七四 十一月二十五日 在米国珍田大使ヨリ
加藤外務大臣宛(電報)

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第四回抗議書國務長官へ手交済ノ件

第四三九号

貴電第三三二二号ニ関シ十一月二十五日午後抗議書ヲ國務長官ニ手交シタリ委細公信

七五 十一月二十五日 在米國珍田大使ヨリ
加藤外務大臣宛

加州土地法ニ関スル我第四回抗議書写送付ノ件

附記 十一月二十五日附日本政府第四回抗議書和訳文
機密第五四号

大正三年十一月二十五日

在米 特命全權大使子爵 珍田捨己(印)

外務大臣男爵 加藤高明殿

本日午後國務長官往訪ノ上十月二十六日附通機密第七三号御来訓ノ趣旨ニ依リ手交シタル第四回抗議書写致ニ及御送付候間御查收相成度尚右淨書ニ際シ往電第四三四号及第四三五号ヲ以テ電稟シタル以外尚修正ノ要ヲ氣付キタルモノ左記数ヶ所アリ之ニ関シテハ差迫リタル事情モアリ旁別ニ

Citizen

「元首ノ市民」ナルコト聊カ異様ノ感ヲ生セシム」ヲ指ス字ヲ使用スルコトアレトモ右ノ如キ特別ノ理由ナキトキ subjects of a country 又 citizens of a Sovereign (or President) ト云フ如キ句ハ共ニ之ヲ避ケル方穩当ナルヘシト思考ス日希通商条約文中 Subjects of Japan トアレトモ是亦穩当ナラスト信ス序ニ附記ス国名ト臣民トヲ結ビ付クル場合ハ better usage ニテハ多ク Japan's Korean subjects 又 Germany's Polish subjects ト云フ如キ場合ニ限ルカ如シ

四 第十三頁十三 十四行 all the subjects of Japan
ヲ the people of Japan ト改メタリ all ヲ略シタルハ people トシタルト其次ニ as a nation ノ句アルトニ依ル

右抗議書写御送付旁申進候 敬具

追ツテ御送付ニ係ル案文中尚第二頁十三行ニ June 24th
トアル外綴間違ノ文字等アリ其「タイプライター」誤記ナルコト明カナルニ付別ニ電稟ヲ須イス夫々訂正セリ又英國式綴ハ依先例総ヘテ米國式綴ニ変更セリ右念申添候也

経伺ヲ須イス本使限り取計ヒ置候ニ付茲ニ事後御承認ヲ求メ候

一、第十頁五、六、七行(原案ノ頁行ヲ指ス以下同之)
to deprive 以下ハ現ニ当方ニテモ誤解シタル次第ニシテ聊カ難解ナル行文ナルヲ以テ

to abridge ex-industria their right of ownership by taking away from it the liberty of alienation by reasonable methods known to law ト変更セリ右ニテモ尚 by reasonable 以下 taking away ニ引掛ル如ク誤解セラル、虞アレトモ此懸念ハ行文ノ前後ノ意義ニテ防カル、コト、信シ可成原文ヲ變更セサル趣旨ニテ右ノ如ク存シ置キタリ

二、第十頁十六行 as to トノ間ニ accorded ヲ挿入セリ尚 as モ之ヲ削除スル方可然ト思考シタルモ原文ノ假存シ置キタリ

三、第十三頁六行 Subject of Japan ヲ Japanese subject ト改メタリ

条約文等ニ citizen ト併用セラル、場合行文ノ冗長トナルヲ避クル為ノ後ニ国文ハ元首(後者ノ場合ニハ反対ニ

別添抗議書写ハ御訓令ニ従ヒ在桑港沼野総領事代理ニ送付済

註 右抗議ノ書翰原文省略

(附記) (註 外務本省ニ於テ作成)

十一月二十五日附日本政府第四回抗議書和訳文

以書翰啓上致候陳者去六月二十三日附ヲ以テ加州ニ於ケル外国人士地所有問題ニ関シ御来示相成候貴翰ノ趣旨ハ慥ニ帝國政府ハ具報致置候

右貴翰ヲ以テ先般審議ニ附セラレタル提案ニ基キ一協約ヲ締結センガ為貴我兩國政府間ニ進行中ナリシ商議ヲ中止セントスル帝國政府ノ申出ニ対シ合衆國政府ニ於テ同意セララル旨御回示相成了承致候然ルニ客年八月二十六日附ヲ以テ貴官ニ呈シタル本使ノ公文ニ対シ貴政府ノ回答ヲ領受セントスル帝國政府ノ期待ニ関シテハ合衆國政府ハ其客年七月十六日附書翰並ニ覚書ニ対シ未タ十分ノ回答ニ接シ居ラスト認メララルニ付帝國政府ニ於テ先ツ右回答ヲ合衆國政府ニ致シ前記書翰及覚書中ノ論点ニシテ帝國政府ノ首肯シ得サルモノヲ貴官ニ告知可致様御希望ノ趣敬承致候
協約締結ノ商議懸屬中ニアリテハ帝國政府ニ於テハ必シモ

客年八月二十六日ノ本使書面ニ對スル貴方ノ速答ヲ緊要ト思考セザリシモ目下既ニ右商議中止セラレタル以上更ニ本問題ノ審議ヲ進行シ可及の迅速ニ兩当事者ノ俱ニ満足スヘキ解決ニ到達センコト帝國政府ニ於テ最モ必要ナリト相認候次第ト御諒知相成度候客年八月二十六日貴官ニ送呈セル牧野男爵ヨリ本使宛ノ電文中ニハ貴論ノ如ク幾分留保ノ點無之ニアラザリシモ客年七月十六日附貴方公文ノ論旨ニ對スル帝國政府ノ意嚮ハ大体同書面ニ拠リテ明瞭ナルヲ得ヘシト思量被致候処六月二十四日附貴翰中御申越ノ次第モ有之候間本使ハ茲ニ更メテ帝國政府ノ主張ヲ再述シ貴方公文ニ對スル下ノ所懷ヲ具陳可致様今回加藤外務大臣ヨリ訓令相接申候

加州今回ノ法律制定カ差別的待遇ヲ加ヘントスル國家の政策ニ基キタルモノニアラズトノ合衆國政府ノ所見ハ帝國ニ於テ欣然同意スル所ニ有之客年八月二十三日發本使宛電文中牧野男爵亦指摘セラレタルカ如ク帝國政府ハ未タ嘗テ斯ル見地ニ立チタルコト無之候乍去該法ヲ促進セシメタル動機及終ニ之カ制定ヲ見ルニ至リタル事情ハ何レモ明白ニ該法ノ日本國臣民ヲ日本國臣民ナルカ故ニ差別視セントスル

サルヘクト被存候

帝國政府ハ經濟事情上已ムヲ得ス制定セラレタルモノナリトノ該法弁護說ニモ亦首肯致兼候新法ノ影響ヲ受クヘキ我邦人ノ員數並ニ土地ノ面積頗ル僅少ナル而已ナラス曩ニ帝國政府ガ合衆國行移民制限ノ政策ヲ勵行シテ以來米國ニ於ケル日本人口著シク減少セル事實ニ顧ミ右經濟狀態ノ現存ヲ確証スルコト難ク此種立法ノ必要ヲ認ムルコト能ハス候仮ニ一步ヲ讓リテ斯ル事情加州ニアリトナサンカ住居ヲ同州内ニ構フル他國國民ニ對シテモ亦同様ノ憂懼ナカルヘカラス帝國政府ハ現状ヲ以テ独リ日本國臣民ニ對シ忌ハシキ差別待遇ヲ与ヘ其土地所有者ヲ全排スヘキ正當ノ理由アリトナスノ說ニハ到底同意スルコト能ハス候右ニ關聯シ貴翰中明治三十二年發布勅令第三百五十二号ニ言及セラレタル次第アリ然ルニ帝國政府ハ該勅令ト加州法トノ間ニ何等正確ナル類同ヲ發見スルニ苦ミ候貴翰ニ於テ援用セラレタル条文ノ規定スル如ク居住ノ自由ハ右勅令ノ下ニ始メテ條約上該自由ヲ有セサル外國人ニモ許可セラレタリ該勅令ノ目的ハ從來拒否セラレタル特權ヲ附与セントスルモノニシテ已存ノ權利ヲ褫奪スルモノニ非ス且右許可ハ一般的ニシテ

地方的政策ニ基由スルコト並ニ本件ハ人種的反抗心ノ表彰ニ外ナラサルコトヲ示シ何等之ヲ否認スルノ事實無之候尤モ該立法者カ右差別的明文ヲ用ルヲ回避セントシテ苦心セルコト疑ヲ容レス而モ該法ノ真相頗ル明晰ニシテ其ノ我國民ヲ標的トシテ制定セラレタルモノナルコトハ容易ニ之ヲ察知シ得ベク且廣ク認識セラルル所ノ事實ニ有之候右ニ關シ本使ハ左ニ客年四月二十二日大統領ヨリ加州知事ニ送ラレタル趣ニ伝承スル電報ノ一部ヲ拔萃致候

加州々民、知事並ニ議會ニシテ若シ果シテ市民タル意思表示ヲ為ササル總テノ外國人ヲ土地所有ノ權ヨリ疎外スルノ必要アルヲ思惟スルニ於テハ合衆國內ノ諸州及數多ノ外國(日本國ヲモ含ム)ト同一ノ方針ニ從ヒ之ヲ行フテ可ナリ然レトモ厭忌スヘキ差別ハ延イテ合衆國政府ノ條約上ノ義務ニ關スル問題ヲ惹起スヘキヤ必セリ因テ本件ノ場合ニ於ケル差別的待遇ニ對シテハ本官ハ熱心敬意ヲ以テ茲ニ抗議ヲ表示シ置カントス

ト本使ハ右文書中ノ提案ニ對シ何等意見ヲ述ルコトハ姑ク之ヲ避クヘキモ右ニヨリ大統領カ本立法ノ性質ニ關シ如何ナル意見ヲ抱有セラルルカハ何人モ之ヲ覺知スルニ難カラ

禁止ハ單ニ特殊ノ場合ニ適用セラルルニ不過候又貴翰ハ日本國ニ於ケル支那人ト本令トノ關係ニ言及セラレタルモ日支兩國間ニ現存スル條約上支那人ノ地位ハ日米條約ノ下ニ於ケル米國在住日本國臣民ノ地位トハ大ニ其趣ヲ異ニス若シ該勅令ノ無カツセハ日本國ニ於ケル支那人ハ他國國民ノ有スルカ如キ居住ノ自由ヲ有シ得サリシモノニ有之候則チ右勅令ニ拠リ支那人モ亦該特權ヲ獲得スルニ至レル次第ニシテ之ヲ從來享有シタル權利ヲ日本國臣民ヨリ剝奪スル加州法ニ比スルトキハ其結果正ニ反對ナリト云フヲ得ヘク候本件ニ關スル拙翰ニ於テ加州法ハ條約ノ明文精神ニ背反シ一般ニ是認セラルル公正ニシテ均等ナル待遇ノ原則ニ副ハサル旨ヲ述ヘタルニ對シ貴翰ハ「條約上ノ權利ノ問題ト公正ニシテ均等ナル待遇ノ問題トハ併立シ得可キハ想像ニ難カラスト雖若シ問題ニシテ契約當事者間ノ明白ナル協定事項ナルニ於テハ當事者ノ何レノ一方タリトモ右協定ノ後ニ至リ自ラ任意ニ承諾シタル該協定中ノ相互待遇方法ヲ以テ公正均等ナラスト言フノ權利ハ無カルベシ」ト論セラレタリ本使ハ右貴說ヲ敬重スルト同時ニ茲ニ敢テ卑見申述度儀ハ千九百十一年條約締結商議進行ノ當時ハ今回加州法ニヨ

リテ生セル如キ事態ハ毫モ予想セラレサリシトコロニシテ
斯ル場合ニ適応スヘキ何等取極ヲ見ス從ツテ今ヤ條約中之
ヲ律スルノ規定無キ新問題ニ逢着スルニ立到リ候次第第二有
之候國家ハ各自自由ニ國內法ヲ以テ他國トノ條約以外ノ事
項ヲ規定シ得ヘキモノタルニハ相違無シト雖其權利ヲ行使
スルニ方リテハ友好國ノ關スル限り双互尊重ノ主義ヲ保持
シ互惠の利益關係ノ密接ヲ図リ條約其者ノ真目的ヲ没却ス
ルコト勿ランカ為自節自制ノ肝要ナルハ一般ニ認知セラル
ル儀ト思料被致候千九百十一年ノ條約締結ニ關スル商議並
ニ貴國ニ援用セラレタル同年二月二十一日附内田子爵ノ書
翰ニ依ルモ外國人土地所有ニ關スル處理ハ締約兩國ニ於テ
正シク相互公正ナル考慮並ニ衡平ノ觀念ニ之ヲ委ヌルコト
ニ默契セルニ相違無ク當時締約國ハ本件ニ關シ明劃ナル條
約上ノ規約ヲ設クルコトヲ希望セサリシト雖右規約ヲ省除
セルハ素ヨリ後ニ締約國ヲシテ條約其者ノ目的ト悖反セル
法律ヲ制定セシムル機會ヲ与ヘンカ為ニハ無之日本國ハ本
件ニ關シ全然合衆國ノ公正無私ニ信賴シタル次第第二有之候
前陳内田子爵ノ書翰ハ合衆國政府希望ノ下ニ送付セラレタ
ルモノニシテ其書中ノ保証ニ關スル寬裕ナル文書ハ必然合

図セラレタルコト無之儀ハ貴見ノ如クニシテ毫モ疑ヲ容レ
ス而シテ其之無カリシ事實ハ則チ以テ現行法規中明文無キ
ニ乘シ友好國民ニ對シ汚辱ヲ加ヘントスル現代米國立法者
ヲシテ反省セシムルニ足ルヘキヤニ思料被致候客年六月四
日附本使提出覺書ニ記述セル原則即チ條約又ハ法律ニヨリ
一旦附与セラレタル權利ハ該權利ヲ發生シタル條約又ハ法
律力存在セサルニ至ルモ尚存続ストイフ論旨ニ關シテハ貴
省ニ於テモ亦同一ノ意見ヲ有セラルル趣ヲ承知スルヲ得タ
ルハ帝國政府ノ頗ル満足トスルトコロニ有之候

然ルニ財産ノ所有權ハ常ニ其財産讓渡ニ關スル完全ナル權
利ヲ包含スルモノナリトノ当方覺書ノ主張ヲ反駁シテ客年
七月十六日附貴方覺書ハ既得所有權ハ總テノ外國人若ハ一
部特定外國人ニ財産ノ讓渡ヲ禁制スル法律ヲ制定スルモ之
カ為ニ侵害セラルルモノト言フヲ得ス若シ仮ニ本使ノ說ヲ
正シトセンカ國家カ其財産移轉ニ關スル法規ニ變更ヲ加フ
ル能ハサルコトトナルヘシト主張セラルル処右貴見ノ肯綮
ニ當レリヤ否ヤハ法律ニ加ヘラルヘキ變更ノ公正ナリヤ否
ヤニヨリテ決セラルヘキモノニシテ而シテ該變更力適用上
一般的ナル場合ト限定的ナルトニヨリ其間自ラ大ナル區別

衆國政府ニ於テ諒トセラルル所ナルヘシトノ期待ニ反キ却
ツテ今ヤ忌ハシキ差別待遇ヲ特質トスル加州法ノ弁護ニ之
ヲ引用セラルルニ至レルハ帝國政府ニ於テ頗ル失望スル次
第二有之候帝國政府ハ右保証ヲ合衆國政府ニ与フルニ際シ
總テノ外國人ニ土地所有ヲ禁セル法律ノ合衆國內ノ或州ニ
存在スルヲ承知致候而モ合衆國ト條約關係ノ有無ニ拘ハラ
ス他諸外國人ガ一般ニ本權ヲ享有スルニ方リ独リ日本國臣
民カ日本國臣民ナルガユエニ本權ヨリ疎外セラルルニ至ラ
ントハ帝國政府ノ曾テ夢想タモセサリシトコロニ有之候
帰化ノ問題ハ根本的ニ之ヲ論スレハ諸國各自ニ關スル政治
問題タルニ相違無之候然レトモ今回ノ場合ニ於ケル如ク本
件ニシテ事實上特ニ或一國民ニ對シ差別的待遇ヲ強制セン
カ為ニ応用セラルルニ方リテハ國際的性質ヲ帶ブルニ至ル
ヘキコト又已ムヲ得サル儀ト被存候今回土地法ニ採用セラ
レタル差別標準ニ關シテハ異說無之ニアラサルモ右ハ明ニ
加州獨特ノ方式ニシテ同州以外合衆國內ノ他州何レニモ土
地所有ノ自由ヲ米國市民權獲得ノ資格ニヨリテ許否スルモ
ノ無之候而シテ之ヲ歴史ニ徵スルニ日本人ニ對スル差別待
遇ハ米國憲法制定者若ハ其後同法修正者ニ於テ未ダ曾テ企

存セサルヘカラスト思惟被致候貴方覺書ニ於テ援用セラレ
タル土地売却並ニ売却代金受領退去ニ關スル合衆國ト他國
トノ條件ノ規定ハ不動産相續カ外國人タルノ故ヲ以テ不可
能トナルコトノ諸外國人一樣ニ適用セラルル場合ナルヤニ
被存候要之貴說ノ如ク既得所有權ニシテ移轉ニ關スル法律
變更ニ抛リ何等侵害セラレサル場合必シモ之無キニアラサ
ルヘシ然レトモ本件ノ場合ノ如ク禁制力特定ノ人種又ハ國
民ニ對シテノミ行ハレ法律上公認セラレタル適當ナル方法
ニヨリ讓渡ノ自由ヲ所有權ヨリ故ラニ褫奪セントスルカ如
キハ全ク其場合ヲ異ニ致候儀ト相信候

貴方覺書中合衆國政府ハ僅々數箇國ニ對シテノミ外國人土
地所有ノ事項ニ關シ最惠國民待遇ヲ容認シタリト記述セラ
レタルハ正確ナリト雖同時ニ右待遇ヨリモ一層ノ寬典ニシ
テ合衆國ニヨリ他ノ外國ニ与ヘラルルモノ有之候即チ條約
ニヨリ合衆國ハ本件ニ關シ自國民ニ對スルト同様ノ待遇ヲ
モ或條約國民ニ与ヘラレ候況ンヤ國內大多數ノ州ニ於ケル
法律ハ全然條約ニ關係無ク不動産ノ所有ヲ外國人ニ許ス
ルヲ以テ土地所有ニ關シ最惠國約款若クハ特別ナル規約ヲ
含ム條約ヲ有セサル國民ハ土地所有權享有ヨリ除外セラル

ルモノナリトノ貴説ハ合衆国内諸州ニ於ケル外國人實際ノ地位ト符号セス且加州ニ於テモ總テノ外國人ハ新法律ノ下ニ於ケル制限ヲ除キテハ何等ノ條約ヲモ有セサル場合ト雖土地所有ヲ許サレ居候即チ加州民法第六百七十一條ノ規定如左ニ有之候

市民タルト外國人タルトヲ問ハス何人モ州内ニ於テ動産不動産兩様ノ財産ヲ取得、所有、処分スルコトヲ得
当方覺書ニ於テ本使ハ千八百七十九年在墨米國公使宛國務長官ノ訓令ヲ援用シ又米露通商條約ノ廢棄ヲ求メタル合衆國議會下院千九百十一年ノ決議ニ言及シ更ニ又千八百七十五年在伯米國公使宛國務省訓令ニ関シ續陳スル所有之候貴方覺書ハ右ニ對シ詳細説明セラルル所アリ而シテ右諸件ニ関シ關係諸外國ニ對スル米國ノ抗議ハ合衆國政府冀望ノ結果ヲ齎ササリシ趣ヲモ垂示セラレタリ右ハ本使ノ頗ル多トスル所ニ有之候得共該諸件ニ関シ此上仔細ニ論究スルハ機宜ヲ得タルモノニ無之又必要トモ難認候因ツテ本使ハ左ノ所懷ヲ述フルニ止メ可申候即チ當方覺書ニ右諸例ヲ援用シタルハ之ヲ以テ本件ト類似ノ性質ヲ有スル問題ニ関シ合衆國自身モ亦常ニ帝國政府ト同様ノ所信ヲ抱キ各外國ニ對シ

合衆國政府ハ新法執行ノ為日本國臣民ノ被リタル損害ニ對シ賠償ノ責ニ任スヘキコト並ニ日本國臣民カ合衆國裁判所ニ於テ權利保護ノ為起訴シタル場合ニハ其審訟ノ迅速有効ニ解決セラレンカ為相當斡旋ノ勞ヲ執ラルヘキコトヲ指示セラレタリ帝國政府ハ此厚誼アル提議ニ對シ謝意ヲ表スルモノニ有之候得共不幸ニシテ本件ハ日本國臣民全般ニ関スル問題ニシテ加州在留日本國臣民ハ個人トシテ享有スル便宜特權ト全然別個ニ該問題ノ國際的性質上當然其判決ヲ兩國政府ノ中央官憲ニ期待スルモノニ有之候故ニ帝國政府ハ遺憾ヲ合衆國政府提示ノ方法ハ妥當ヲ欠キ本件ノ如キ場合ニ適応セサルモノト認メサルヲ得ス此種問題ハ外交徑路ニ因リ最モ善ク解決ニ到達スルヲ得ベシト信スル旨ヲ茲ニ重ネテ聲明スルヲ其義務ト相認候帝國政府ハ合衆國政治組織ニ於テ多少憲法上ノ困難存在スルヲ諒知スルモノニ有之候得共本件ノ處理ハ米國中央政府ニ對シテ之ヲ求ムルノ外他ニ道無ク從ツテ客年七月十六日附貴方覺書中合衆國各州ニ於ケル外國人土地所有權ノ問題ハ條約締結權ノ範圍以外ニアリトノ說ヲ否認セラレタルヲ歎ブモノニ有之候
曩ニ協約締結ノ商議ヲ中止セルハ帝國政府ニ於テ同協約ハ

同様ノ態度ヲ執ラレタルコトヲ指摘セント試ミタルニ外ナラス而シテ右ハ貴翰中ノ叙述ニヨリテモ亦確証セラレタル事實ニ有之候關係諸外國政府カ合衆國政府ノ抗議ヲ如何ニ遇シタルニモセヨ又其異議主張ノ結果如何ナリシニ拘ハラス合衆國政府カ其所信及態度ヲ飽迄固守持續シテ捨ツルコトナカリシハ事實トシテ之ヲ認識シ得ヘシト被存候

要之本件ニ関シ今日迄帝國政府カ合衆國政府ヨリ領受シタル書翰ニ於テハ未タ帝國政府抗議ノ主要論點ニ對シテ根本的ニ回答セラレタルモノ無ク本件抗議ヲ提出スルノ已ムナカラシメタル当初ノ主張即チ新加州法ハ日本國臣民ニ對シテ忌ハシキ差別待遇ヲ与ヘ現行條約ノ明文及精神ニ背馳シ而シテ日米兩國間國交年來ノ特徵タル深誼懇情ト合致セサルモノナリトノ確信ヲ去ルコト能ハサルハ帝國政府ノ深ク遺憾トスル所ニ有之候抑モ本問題ハ極メテ重要ニシテ且其影響スルトコロ頗ル遠大ナリト雖同時ニ必シモ複雜セル性質ヲ有スルモノニアラス帝國政府ハ本問題ニ関シ今日迄合衆國政府ニ提出シタル書類中已ニ十分其所信ヲ披瀝セリト認ムルヲ以テ既說以外更ニ抗議ヲ敷衍スルノ必要アリト思考不致候

其草案ノ形ニテハ到底現存ノ誤解ヲ調整スルニ足ラスト認メタルカ故ニ有之候帝國政府ノ所見ニヨレハ吾人第一ノ任務ハ不幸ナル立法ニヨリ發生セル加州ニ於ケル現状ヲ匡正スルニアリ而シテ后將來起リ得ヘキ同様ノ紛争ニ對シ之ヲ予防スルノ道ヲ講スルニ有之候事必シモ容易ナラサルヘシ而モ帝國政府ハ十分重キヲ米國政府ノ誠實ト明断トニ措キ之ニ信賴スルコト篤ク期シテ本問題解決ノ方法発見セラルルヲ疑ハサルモノニ有之候就テハ本書翰ニ對スル貴答速ニ到リ貴國政府ニ於テ前顯ノ意見ニ贊同セラレ当面ノ困難ヲ救済スル為有効ナル方法ヲ提示セラレンコト帝國政府ノ切望ニ堪エサル所ニ有之候尚本問題ヲ処スルニ方リテハ全然公正ノ觀念ヲ以テ之ニ對シ今後更ニ事態ヲ錯綜セシメ兩國國民ノ感情ヲ刺激スル如キ紛糾ヲ重ヌルニ至ラサル様十分力ヲ尽スヘキコト貴我兩國政府ニ取り最モ緊要ノ任務ナルヘシト確信致候

本使ハ茲ニ貴官ニ向テ重テ最高ノ敬意ヲ表シ候 敬具

大正三年十一月二十五日

七六 十一月二十八日 在米國珍田大使ヨリ
加藤外務大臣宛

加州土地法問題ニ関シ國務長官ト會談ノ件

機密第五五号 (十二月二十五日接受)

大正三年十一月二十八日

在米

特命全權大使子爵 珍田捨己(印)

外務大臣男爵 加藤高明殿

本月二十五日國務長官往訪加州土地法ニ関スル我第四回抗議書ヲ手交シタル際同官ト本使トノ間ニ行ハレタル談話中貴電第三二五号ニ関スル部分ハ往電第四四〇号ヲ以テ電票ニ及ヒタレトモ抗議書ニ関スル分ハ急ヲ要セスト認メタルニ付往電第四三九号末尾ニ附記シタル通郵報ニ讓ルコトトシ茲ニ報告申進候

通機密送第七三号御訓令ニ関シ本使ハ十一月二十五日機密第五四号往信ヲ以テ具申ノ公柬ヲ認メ國務長官ニ面會シ第一我第四回抗議書ノ案外遲延ニ亘リタル事由ヲ弁明シタル上帝國政府抗議ノ肯綮ヲ説明シ且加州問題未決ノ結果動モスレハ無責任ナル新聞紙又ハ論客等ハ種々ノ蜚語ヲ放チテ

兩國ノ人心ヲ蠱惑スルノミナラス輒近ノ經驗ニ徴スルニ日米兩國ノ反目ヲ奇貨トスル外國勢力ヲシテ其間ニ中傷離間ノ小策ヲ弄スルノ機會ヲ得セシムル等兩國敦交ノ大局上憂慮ニ堪ヘサル狀勢ナルヲ以テ可成速ニ本問題ノ満足ナル解決ニ達スル様國務長官ニ於テ此上トモ十分尽力相成度旨ヲ附言シテ右抗議書ヲ手交シタルニ同長官ハ反覆熟読ノ後開口一番本書中大統領ヨリ加州知事ニ宛テタル電信ヲ引用シアル処右電信ハ當時大統領カ極力加州議會ノ反省ヲ促サムト欲スルノ熱誠ニ出デタルモノナルヲ以テ茲ニ之ヲ引用シテ其言責ヲ求ムルカ如キハ稍々過酷ニアラズヤト述べ尚ホ進テ末段

“Our first mutual concern, it appears to the Imperial Government, should be to ameliorate the present situation in California created by the unfortunate legislation, and then to guard against all possible future troubles of a similar nature.”

ノ一項ヲ指摘シテ書中記載ノ論點ニ関シテハ熟考ノ上ニアラサレハ何等意見ヲ陳ブルコト能ハサルモ問題ノ骨子ハ此點ニ存スルコト言ヲ要セス帝國政府ノ此希望ニ就テハ米國政府ニ於テモ全然同一ノ精神ヲ以テ本問題ノ解決ヲ求メム

トスルノ念慮ハ終始渝ルコトナシト雖モ如何ナル方法ニ依テ此目的ヲ貫徹スヘキカハ極メテ困難ノ問題ナリ加州土地法自体ノ撤廃ハ最簡最捷ノ方法タルヤ勿論ナリト雖モ此事タル到底今日ニ望ミ難ク現ニ今般加州ニ於ケル選舉ノ実績ニ徴スルニ國會上院議員ノ選舉ハ民主黨ノ勝利ニ歸シタルニ拘ラス州知事ノ選舉ニ至リテハ其結果全ク反對ニ出テ大多數ヲ以テ現任「ジョンソン」氏ノ再選ヲ見土地法ハ更ニ州内輿論ノ裏書ヲ受ケタル姿トナレル事實ニ顧ミルモ該法ノ改廢ヲ見ムト欲スルノ冀望ハ当分ニ之ヲ斷念セサルヘカラス去リトテ中央政府ニ於テ之レカ改廢ヲ謀ルカ如キハ憲法ノ許ササル所ニシテ全然不可能ノ事ニ屬ス惟フニ日本政府ニ於テモ其辺ノ事情ヲ知悉シ居ラルベキヲ以テ我ニ向ヒ絶對の不可能ノ解決ヲ要望セムトスルノ真意ニアラサルヘシ果シテ然ラハ如何ナル方法ニ依テ本問題ノ解決ヲ求メムトスルノ希望ナル哉ト質問シタルニ付本使ハ之ニ對シ帝國政府ハ屢次ノ抗議書中詳述シタル通り加州土地法ハ日米條約ノ正条及精神ニ違反スルモノト認ムルカ故ニ米國政府ニ向ヒ之カ解決ヲ要望スト雖モ解決ノ方法如何ヲ論究スルハ第一米國政府ノ責任ニ屬スヘキ問題ナリト信スルヲ以テ別ニ

具體的ノ提案ヲ避ケ此點ニ就テハ專ラ米國政府ノ正義心ニ信賴シ居ル次第ナリ但本使一己ノ私見ヲ以テスルトキハ苟クモ中央政府ニ於テ土地法ヲ無効ニ帰セシメムトスルノ誠意ヲ有スルニ於テハ此目的ヲ貫徹スルノ道一ニシテ足ラサルベシト思考ス条約締結ノ如キ其一例ニシテ憲法ノ正条ニ照ラシ決シテ絶對の不可能ノ事ニ非スト信スル旨ヲ陳ベタルニ同長官ハ是憲法上重大ノ問題ナリ自分ノ意見ニ拠レハ條約ノ効力ニ関シ各州ノ憲法又ハ法律ニ反對ノ規定アルニ拘ラス云々ノ憲法ノ規定ハ主トシテ未定州法ヲ指スモノニシテ之ヲ擴充シテ既存州法ニ迄遡及セシムルコトハ憲法上一大疑問タルヲ免カレス況ヤ之ニ由テ土地法ノ如キ重大ナル既定州法ヲ無効ニ帰セシムルカ如キハ大々的疑問ナリト信ス試ミニ極端ノ一例ヲ假設シテ陪審制度變更ノ結果ヲ生スヘキ條約ノ締結ヲ見タリト想像セムニ條約ノ効力ヲ主張スルコト能ハサルヤ疑ヲ容レサル所ナリ云々ノ意見ヲ縷述シタリ右ニ對シ本使ハ嚴トシテ憲法上保証セラレタル陪審制度ニ関スル人權ト現ニ國際條約ノ一主題トナリ居ル土地所有權トハ自ラ別種ノ問題ナルコト並ニ條約ノ効力ニ関スル憲法ノ正条ハ明カニ反對州法ノ既存ヲ予想シタルモノナ

リト信スル旨ヲ陳ブルニ止メタリ國務長官ハ尚ホ語ヲ継ギテ憲法ノ解釈ハ別問題トシテ加州問題ノ善後方法ニ對シテハ自分ニ於テ十分講究ヲ重ヌヘキニ付本使ニ於テモ熟慮ノ上何等成案アラハ非公式ニ相互ノ意見ヲ交換シタキ旨極メテ打解ケタル態度ヲ以テ懇話サレタルヲ以テ本使ハ本件ニ就テハ多少腹案ナキニアラサルヲ以テ尚熟考ノ上異日或ハ具体的ニ私見ヲ開陳スル機會アル哉モ難計旨ヲ答ヘ置キタリ夫レヨリ余談トシテ協約案撤回ノ事ニ談及シタルヲ以テ本使ハ試ニ米國政府ニ於テ遺産相続ニ關スル條項ノ刪除ヲ主張シタル結果同案ヲシテ加州問題ト全然沒交渉ノ空文ト化セシメタルハ遺憾ニ堪ヘズトノ意ヲ述ヘタルニ同長官ハ該條項ノ存置ハ上院通過ノ見込ヲシテ益薄弱ナラシムルノ虞アリシヲ以テ可成丈同案ノ成立ヲ図ルノ精神ヨリ其刪除ヲ主張シタル次第ニシテ要スルニ所謂 The line of the least resistance ヲ選ムノ必要ヲ感シタルガ為ナリト説明セラレタリ

右會談ニ關シ本使ノ會得シタル感想中特ニ留意ヲ要スヘキモノト認メタル点ヲ左ニ列記シ閣下御參考ノ料ニ供ス一、我抗議書ヲ熟閱シタル後國務長官ノ態度及辭氣ニ由テ

タルヲ免カレス右ハ多分國務長官ニ於テハ前回交渉ノ行縣ニ心付カス全ク一時疎虞ノ結果ニ外ナラサルヘシト察セラルルモ万一前回交渉ノ際彼ニ於テ只管我反對ヲ防カムトノ目的ヨリ實際大統領ノ真意以上ニ強硬ノ態度ヲ裝ヒタル内情アリタリトセハ本條項ニ對スル大統領ノ反對ハ主義ノ問題ニ非スシテ全ク權宜ノ問題ナルヲ以テ爾來事情ノ變化ニ顧ミ必スシモ再考ヲ求ムルノ余地ナキ問題ト看做スヲ要セス此点ハ加州問題ノ善後策ニ關スル我方針ニ影響スヘキモノナルカ故特ニ注意シテ事ノ真相ヲ明カニスル様適當ノ方法ヲ講スヘシ

右報告旁申進候 敬具

追而加州土地法問題ニ關スル公文、談話等ハ特ニ急ヲ要スト認メラルル場合ノ外將來共總テ郵報ニ委ス可キニ付右御承認相成度為念申添候

七七 十二月二日 加藤外務大臣ヨリ
在米國珍田大使宛(電報)

第四回抗議提出ノ事實ハ議會ニ於テ言及スル
コトアルベキ旨國務長官ヘ申入方ノ件

第三三一號

一 米國加州ノ外國人土地法及土地問題ニ關スル日米協約締結交渉關係(五) 七七(六) 七八

觀ルニ同書翰ノ上ニ表ハレタル帝國政府ノ態度ニ對シ同長官ハ予想以上ノ好感情ヲ以テ之ヲ迎ヘタルカ如ク察セラレタリ大統領ノ電信引用ニ關スル所言ノ如キモ寧ろ諧謔的ノ語調ヲ用ヒ強チ不滿ヲ漏ラシタルモノトモ認メラレス要スルニ我抗議書ハ頗ル良好ノ印象ヲ与ヘタル様ニ看取シタリ

二、條約ノ効力ト既定州法トノ關係ニ就テハ國務長官ハ頗ル詳細ニ其意見ヲ反覆シタルモ終始断定的ノ明言ヲ避ケ「大疑問ナリ」トカ又ハ「大々的疑問ナリ」等ノ語辭ヲ用ヒ力メテ余地ヲ存スル様用心ノ跡アリタルハ多少注意ニ価ヒスヘキ点ナリト思考ス

三、協約案中遺産相続ニ關スル條項ノ刪除ヲ主張シタル理由ニ就テハ國務長官今回ノ説明ト交渉當時ノ説明トノ間ニ五ニ衝突ノ点アルヲ認ム當時國務長官ノ所說ニ拠レハ大統領ニ於テハ飽クマテ條約ニ由テ既定州法ノ効力ヲ抹殺スルノ非違ヲ主張シ本項ヲ刪除セサルニ於テハ仮令上院ノ同意ヲ得ルモ之ヲ裁可ヲ拒ムヘシト迄断言シタル由ナリシニ反シ今回ノ説明ニ拠レハ右ハ上院ノ反對ヲ避クルノ目的ニ出テタルモノノ如ク結局前後兩立セサル説明

十一月二十五日手交ノ抗議内容ハ六月二十三日付國務長官來翰ト共ニ他日打合ノ上發表スルコトナルベキモ右抗議提出ノ事實ノミハ自然議會ニ於ケル答弁ノ際言及スルノ必要生スヘキニ付予メ國務長官ノ承知ヲ乞フ旨為念申入レラレタシ

六 米國ノ排日行動予防ノ為ノ協約締結問題

七八 十月十三日 在米國珍田大使ヨリ
加藤外務大臣宛(電報)

米國ノ排日行動予防ノ為ノ新協約締結ニ關シ
意見稟申ノ件

第三六〇號

往電第三五九號ニ關シ曩ニ帝國政府ニ於テ協約案ヲ撤回シタル重ナル理由ハ同協約ノ為加州問題ニ對スル我從來ノ主張ヲ拋棄スルコト能ハサル点ニ歸著スル義ト了解セラルル所若シ該案ニ多少改竄ヲ加ヘ協約案トハ全然沒交渉ニシテ專ラ將來ノ排日行動ヲ予防スルノ趣意ニ出デタル獨立案トナシ幸ニ其締結ヲ見ルヲ得ハ將來排日案再燃ノ為益々時局