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Resume of the controversy between Japan and the United States arising out of the California question.

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RESUME OF THE CONTROVERSY

BETWEEN

JAPAN AND THE UNITED STATES

ARISING OUT OF THE CALIFORNIA QUESTION.

RESUME OF THE CONTROVERSY BETWEEN JAPAN AND THE UNITED STATES ARISING OUT OF THE CALIFORNIA QUESTION.

I.

Nature of the so-called Land Act.

In the State Legislature of California, there was not a session for more than ten years last past, in which one or more bills of an anti-Japanese character was not introduced. Owing, however, to the wise counsel and hearty co-operation on the part of the Governments and people of both the United States and Japan, no such measures were actually enacted into law and nothing of a serious moment in that respect occured until last year. Finally, in that year an anti-Japanese bill was passed in the form of a land law; and the statute thus enacted has since become the subject of serious discussion between the Japanese and American Governments. In preparing a résumé of the controversy, a brief explanation of the nature of the enactment in question will be first given.

Of the many bills introduced into the fortieth session of the Legislature, which assembled in January, 1913, those which had important relation to the Japanese people, were the bills to prohibit the ownership of land by Japanese subjects. Those projects were, under the rules, referred to the appropriate committees

in both houses and in each house the committee reported a separate substitute bill. The main features of the Assembly's substitute bill were: (1) to prohibit the ownership of real property by aliens, provided that this Act shall not apply as long as the property now owned is so held by present owners, their wives, children, etc.; (2) aliens, hereafter acquiring real property, to be allowed to hold the same for one year only, and at the expiration of that period, to escheat to the State, unless the alien owner becomes or declares his intention to become a citizen; (3) no alien to be allowed to lease real property for a longer period than five years; (4) corporations of which a majority of the issued capital stock is owned by aliens who are ineligible to become citizen, to be considered as aliens.

The bill passed the Assembly on April 15th of last year. The Senate's substitute bill was in substance the same as that of the Assembly, except that the proviso in Sec. (1) was suppressed, and the term of lease was limited to "three years" instead of "five years." On April 12, this substitute bill passed the second reading in the Senate, but later on various amendments were proposed, and extended discussions ensued. Finally, a new draft, prepared by Mr. Webb, was adopted in both houses, as an amendment of the Senate substitute bill. This bill passed, by an overwhelming majority, the Senate on May 2, and the Assembly on May 3, and was signed by the Governor on May 19. The law thus became operative, in accordance with the provision of the Constitution of the State, on August 10, ninety days after the final adjournment of the Legislature.

The important features of the Act are as follows:

1. Aliens, who are eligible to citizenship under the laws of the United States, may, equally with citizens, acquire, possess, enjoy, transmit, devise and inherit real property and any interest therein.
2. Aliens, who are not eligible to citizenship may acquire, possess and transfer real property and any interest therein, to the extent prescribed by existing treaties between the United States and the country of which such aliens are citizens or subjects, and not otherwise.

   Corporations, a majority of whose members are aliens ineligible to citizenship, or a majority of whose stock is owned by such aliens, are treated the same as ineligible aliens.
3. Any real property and any interest therein, acquired in violation of the Act, to escheat to the State.
4. Aliens and alien legal persons belonging to the class mentioned in Sec. 2 are permitted to lease land for agricultural purposes for a term not exceeding three years.

Since the existing laws of the United States are without any explicit provision as to the eligibility of Japanese to citizenship, and since the Japanese-American Treaty contains no express stipulation regarding the right of land ownership of Japanese in the United States, the new enactment would in effect work an invidious discrimination against subjects of His Imperial Majesty. It is true that under the law, Japanese are granted the right to lease agricultural lands for a short term—a right which is not expressly secured by the Treaty,—but they are denied the right to acquire, possess and inherit land, whereas that right is freely

granted to other aliens. In the original Assembly's substitute bill, all aliens were placed, as long as they did not declare the intention to become citizens, on the same footing as the Japanese in the matter of real property ownership, and especially, as regards the right to lease real property, no distinction whatever was made between Japanese and other aliens. The law as it passed, however, took advantage of Japanese being treated as "ineligible to citizenship" and under such soft and innocent words as "aliens other than those ineligible to citizenship" effected even more marked discrimination against Japanese than was intended in the various original bills. It is this unjust, unfair and invidiously discriminatory phase of the Law which forms the main issue between Japan and the United States.

II.

The Way in which the Law was enacted and the Steps taken by the Imperial Government before the Enactment.

Upon the opening of the last session of the State Legislature of California, the Imperial Government made to Mr. Taft, then the President, and to Mr. Knox, then the Secretary of State, an earnest request that, in order to prevent the enactment of anti-Japanese laws, appropriate and effective measures might be taken by the Federal Government, as had been done in similar circumstances on previous occasions. This they gladly complied with. As, however, it was near the close of his adiministration, Mr. Taft could not

do much before he was relieved by Mr. Wilson. In view of the situation which prevailed in the State of California at that time, the Imperial Government thought it wise to call the special attention of the new Administration to the matter and instructed Ambassador Chinda to approach the new President for that purpose. Mr. Wilson received Ambassador Chinda, on March 5, the second day of the new Administration. Under instructions of his Government, Viscount Chinda stated to the President, on that occasion, that the Imperial Government were deeply pained to find, in spite of Japan's constant friendly attitude towards the United States, various bills of an anti-Japanese nature pending in the Legislatures of Pacific Coast States, particularly in that of California, and that, should any of these bills become a law, the effect would be very serious, and the Ambassador expressed an earnest hope that the new Executive would, in the interest of the friendly relations of the two countries, exhaust his best endeavours to check the threatened hostile legislation. The President thanked the Ambassador for the representation thus made, and assured him that, although the Central Government could not, under the institution of the United States, interfere with the rights reserved to the States of the Union, he would not hesitate to do all in his power to meet the wishes of the Imperial Government. On March 13, the same assurance was given to the Ambassador by Mr. Bryan, the Secretary of State.

Meantime, in California our Consul was doing all that he could properly do in the circumstances. Besides, the Panama Pacific International Exposition Company, which was energetically opposed to the enactment of hostile measures, did not hesitate

to use every legitimate means in their power, to prevent the antagonistic measures in question from being carried out. In addition, a number of chambers of commerce and other influential bodies passed resolutions condemning such anti-Japanese legislation, and similar views were also expressed in no small number of newspapers.

In the first part of the session, the fate of the bill remained in doubt, but in the latter half of the session the activities of the anti-Japanese members in the Legislature increased and the situation became serious.

Thereupon, Ambassador Chinda, under instructions from the Imperial Government, had an interview first with the Secretary of State on April 12, and then with the President on April 15. On both occasions, the Ambassador, after dwelling upon the traditional friendship between Japan and the United States, explained how very sincere the Imperial Government had always been in their desire to maintain and strengthen the friendly relations of the two countries, and as illustrative of the sentiments of goods accord and good neighborhood, he pointed out such instances as the voluntary restriction of emigration of Japanese to the United States, as well as their prompt acceptance of the invitation to participate in the San Francisco Fair and the like. The Ambassador then stated that the number of the Japanese and their activities in California were greatly exaggerated by the public, and he declared that the acreage of the land owned by them was too small to justify any apprehension or uneasiness on the part of the people of California, and in these circumstances, the Imperial Government could not, he said, understand why the lawful

rights of Japanese must be curtailed or abridged by such unjust and extraordinary enactments, and he added that such discrimination was likely to bring deplorable consequences to the relations of friendship as well as to the commercial intercourse between Japan and the United States, and that for the sake of the honor and dignity of the country, if for no other reason, the Imperial Government could not remain indifferent to such unfair treatment of their people. The Ambassador then asked the President and the Secretary of State that greater efforts be made by the Federal Government to prevent the passage of the measure in question.

To this, both the President and the Secretary of State, responded that they fully appreciated the wish of the Japanese Government, and they took particular pains, in explaining that the power to grant land ownership rested entirely with the Authorities of the State, and the exceptional circumstance, they added, that the Federal Administration and the State authorities of California happen to belong to different political parties, made the situation all the more difficult to deal with. Both officers further assured the Ambassador that the representations made by him would be given most sympathetic consideration, and the best efforts of the United States Government be made with a view to bring about an amicable settlement of the question and they asked him to bring this attitude on their part to the notice of his Government, so that it might be thoroughly understood by them.

On April 18, the President caused the Secretary of State to send a telegraph to the Governor of California, advising him that while the President was not in the least inclined to disregard the independence of the legislative power of the State of California,

he was anxious that no attempt should be made, having in view the good relations with a friendly Oriental Power, to use the formula of eligibility to citizenship for the purpose of drawing a distinction between aliens in the matter of the enjoyment of rights. More telegrams followed this, from the President on April 22 and May 1, and from the Secretary of State on May 11, to the Governor who, in response to these messages, explained his position. Meanwhile, Viscount Chinda had several interviews with the Secretary of State and endeavored to cause the contention of the Imperial Government to be fully appreciated by the United States Government. He repeatedly explained that the bill then pending was evidently aimed at the exclusion of Japanese people and was, consequently, in disregard of the letter and spirit of the Treaty, and he urged that no matter what the wording of the Act might be, and law, which would in effect be discriminatory and therefore offensive to Japanese, ought not, in good neighborhood, to be enacted.

Unfortunately, the State Legislature took no heed of the advice given by the Federal Government and consequently the situation became still more grave. The President, then, saw the necessity of direct consultation with the authorities of the State in the matter and sent, with the consent of the Governor and the Legislature, the Secretary of State to California. Mr. Bryan reached the State capital on April 28 and appeared in the joint sessions of the two houses of the Legislature, in order to explain personally the request of the Federal Government. The Secretary made various suggestions and tried his best to make terms of the bill less objectionable. But the Governor and the members of

the Legislature who supported him, remained unmoved by what the Secretary said, strictly adhering to the principle that the rights of the State must not be interfered with, and the Webb bill, which is so marked in its anti-Japanese features, at last passed the Legislature.

III.

Protest of the Imperial Government and Answer of the United States Government.

Now that the bill had become law, and no room left for remonstrance, the Imperial Government had no other recourse except to lodge with the United States Government a formal protest against the measure. They accordingly instructed their Ambassador in Washington to hand to the Secretary of State, on May 10, their first formal note of protest, full text of which is given in Annex No. 2. The note pointed out, with particular emphasis, that the Act in question was not only essentially unfair and discriminatory, but was inconsistent with the treaty provisions and was also opposed to the spirit and fundamental principles of amity and good understanding, upon which the conventional relations of the two countries depended. Then agin, it was specifically argued that the enactment in question was unjust and contrary to the treaty provisions, not only in depriving Japanese of the right to transmit to their legal heirs their already lawfully acquired landed property, but in several other respects. In con-

clusion the hope was expressed that, in view of the sympathetic and accommodating disposition, with which the American Administration had always befriended the Japanese Government, the present difficulties would be set at rest in a manner worhty of the historic relations of cordial friendship between the two neighboring nations.

On May 11, the Secretary of State sent, by order of the President a telegraph to the Governor of California, in which, apprising the latter of the receipt of a protest from the Japanese Government, he said that the President was fully alive to the importance of removing the root of discord between American citizens and subjects of an Oriental nation residing in the country, but that he was impelled by a sense of duty to express the hope that the Governor would set fit to allow time for diplomatic effort to discover and correct any evils that might exist in connection with the landownership by aliens. This effort on the part of the President to induce the Governor to reconsider the matter and to refrain from signing the bill was without avail. The Governor telegraphed back to the President on May 14, pointing out the necessity which called for the legislation in question, and expressed the belief that in enacting the measure the people of California had violated no treaty rights. He thus made it known that he was determined to approve the bill. The Governor signed the Act on the 19th. Upon receipt of the news that the bill had become law, the Secretary of State handed to Ambassador Chinda a reply to the protest of the Japanese Government, full text of which is given in Annex No. 3. It began by stating that the United States Government regretted that the Japanese Government

should regard the legislation in question as an indication of unfriendliness towards their people and that the President and the Secretary of State, had very earnestly attempted to induce the legislative authorities of California to reconsider the matter. Then the reply endeavored to explain that the enactment was without any political signification, but was solely the result of particular economic conditions existing in California. It was further pointed out, in response to the Japanese contention, that the declared intention of the law was to respect and preserve all rights under existing treaties, and that in case of failure to accomplish that intent, the aggrieved Japanese would have the right to resort to the federal courts for the enforcement of their rights. It was added, in conclusion, that the economic policy of a single state with regard to a single kind of property, could not turn aside the strong and abiding currents of generous and profitable intercourse and good understanding between the two nations.

No doubt it was because the United States Government appreciated the position of the Japanese Government and realized the serious international complications resulting from the conduct of the State of California, that they attempted to prevent, by some means, the passage of the bill while it was still under consideration in the California Legislature, and went at last even so far as to send the Secretary of State to California to accomplish that end. In view of this and also of what had passed between Ambassador Chinda and Secretary Bryan in their several interviews on the subject, it was considered but natural that the United States Government, which could not prevent the enactment of an unjust law, should now take some appropriate steps to nullify the measure.

As above-stated, however, the reply of the United States Government while avoiding the maintenance of the issue that the Act in question was not in regard of existing treaty rights, not only showed no disposition to test the validity of the enactment in the court but failed to offer any solution whatever of the problem.

Believing, as they did, that the Act in question was in violation of treaty provisions, and, therefore, that the duty of remedying the wrong rested with the United States Government, the Imperial Government could not possibly be satisfied with such a reply. Accordingly, on June 4, they instructed their Ambassador in Washington to adress to the Secretary of State the second note of protest (Annex No. 4), setting forth in fuller detail, the points which they believed to be in contravention of the existing treaty provisions. The Secretary of State, in receiving the note, reiterated the assurance that careful consideration would be given to the matter and that the enactment was not a culmination of racial prejudice, but an outcome of purely economical question.

On the following day, Viscount Chinda had audience with the President and presented a memorandum in which the views of the Imperial Government on the general relations between Japan and the United Staets were frankly set forth, in the hope that this exposition might help to solve the difficulty. The memorandum, full text of which is given in Annex 5, stated in substance that as Japan and the United States were geographically destined to be permanent neighbors, the people of the two countries were inevitably in a position to be brought in future, economically and socially, into closer contact with each other and that, as it would contribute to the mutual happiness of the two nations to prefect

the relationship of good neighborhood by a policy of reciprocal conciliation and co-operation, each nation, aspiring to be fair and just, should not commit any acts which might hurt the dignity or injure the feelings of the other. The President, who listened to the reading of the memorandum, declared that he was fully alive to the importance of maintaining the good relations between the two nations and explained at length, as did also the Secretary of State, that the enactment in question was purely based on economical considerations and was not the outcome of racial prejudice. He also added that if on further study, the law should be found to be in conflict with treaty provisions, the administration would be prepared to seek a judicial remedy, and that, even in case a suit should not be instituted, means would be sought to compensate Japanese for any loss which they might have actually sustained.

In the meantime, the Imperial Government as the result of their further study of the provisions of the Land Act which were inconsistent with Treaty provisions, prepared an Aide Mémoire as is given in Annex No. 6. This Ambassador Chinda presented to the United States Government on July 3, as supplement to his second note of protest above referred to.

On July 16, the Secretary of State handed to Ambassador Chinda the reply of the United States Government (Annex Nos. 7 & 8) to the second note of the Imeprial Government and the supplementary Aide Mémoire. It was a very long one, and after giving in detail counter arguments on the points raised in our protests, three suggestions were given as a remedy in the case: (1) in case the aggrieved Japanese should bring suit in the United

States Court, the American Government would stand ready at all times to use their good offices to secure prompt and efficacious determination; (2) the United States Government would stand ready to compensate Japanese for any loss which they might show to have actually sustained on account of the statue; or (3) to purchase from them their lands at their full market value, prior to enactment of the statute.

The attitude of the United States Government on the question, as had been evinced in this correspondence, was far from being satisfactory to the Imperial Government, and, therefore, they prepared their third note of protest which Ambassador Chinda handed to the Secretary of State on August 26 last (Annex No. 9.) In this note the Imperial Government pointed out that the Act in question established a discrimination of a most marked and invidious character against Japan by depriving Japanese of the right of land ownership, while freely continuing the same right, not only, in favor of the citizens of all the other Powers with which the United States mainatins reciprocal treaty relations, but in favor of many non-treaty aliens, and that whatever causes might have been responsible for the measure, it could not be denied that, in its final manifestation, it was clearly indicative of racial prejudice, nor could any justification for the Act be found in the simple assertion that the legislation was the outcome of economic conditions and it was, moreover, pointed out that the question of immigration, which the Secretary of State referred to in his last note, had nothing whatever to do with the present controversy, as that question was satisfactorily adjusted between the two Governments a few years ago, and that the present contro-

versy related exclusively to the question of the treatment of the Japanese subjects, who are lawfully in the United States or may hereafter lawfully become residents therein.

IV.

Negotiations for the Conclusion of a New Convention.

The correspondence as reviewed in the foregoing pages shows that the United States Government are not disposed to take issue whether the Act in question is in conflict with the existing treaty provisions or not. Nor are they ready to go beyond suggesting a few trivial remedies in the case. It appeared to the Imperial Government that a fundamental solution of the question could, in these circumstances, only be found in the conclusion of a new supplementary convention designed to cure the existing treaty. After careful study they decided to make a proposition along these lines and instructed Ambassador Chinda in August last to propose to the United States Government the conclusion of such a convention, draft of which was tentatively submitted by the Ambassador to the Secretary of State. Prolonged negotiations followed and finally, the United States Government proposed an amendment to the Japanese draft which would in effect make the project foreign to the controversy which alone had given rise to it. Therefore, after mature deliberation the present Ministry reluctantly decided to withdraw the proposal and sent to Ambassador

Chinda on the 9th instant the following telegraphic instruction, copy of which he left with the Secretary of State on the 10th.

Baron Kato to Viscount Chinda.

Department of Foreign Affairs.
June 9, 1914.

Among the more important pending questions that confronted me when I assumed charge of this department, was the issue resulting from the enactment last year of the Legislature of California respecting alien real property ownership. The measure, as you are aware, undertook, in effect, to draw a distinction in the matter of such ownership between aliens belonging to different races. The avowed purpose of the law was, on the one hand, to annul the then existing right of ownership so far as Japanese subjects were concerned, and, on the other, to continue the right in favor of aliens of the white and black races.

I have given the subject my most serious consideration and am consequently well satisfied that the enactment in question, is not only, in disregard of the letter and spirit of the existing treaty between Japan and the United States, but is essentially unfair and invidiously discriminatory against my countrymen, and inconsistent, as well, with the sentiments of amity and good neighborhood which have always presided over the relations between the awo countries; nor can I escape the conviction that said enactment, which was intended to have international effect, is also in excess of the authority of the State of California, for the reason, that

the separate States of the United States are, internationally speaking, wholly unknown and entirely without responsibility. In any case, the Imperial Government are confident that the action complained of, stands without historical parallel, and they are happy to believe that the legislation in question forms no part of the general policy of the Federal Government but is the outcome of unfortunate local conditions.

I, therefore, fully concur in the views which you, in pursuance of instructions from my predecessor, presented to the Honorable the Secretary of State on the subject. I also cordially appreciate the motives which, in the interest of international conciliation and good will, induced Baron Makino, to give favorable consideration to the idea of concluding a convention regarding the matter. But the project, as it stands at the present time, instead of composing existing misunderstandings, would I fear tend to creat new difficulties.

Accordingly, you are instructed to inform Mr. Bryan that the Imperial Government are disinclined to continue the negotiations looking to the conclusion of a convention, on the lines of the project which has been under discussion, but that they prefer to recur to the correspondence which was interrupted by the ineffective negotiations and that they will now look for an answer to the Note which you handed to Mr. Bryan on the 26th August last, hoping that in a renewal of the study of the case, a fundamental solution of the question at issue may happily be found.

The negotiations looking to an adjustment of the matter in dispute by means of a convention having failed, the advantage of still withholding from the public the correspondence that has

passed between the two Governments on the subject, is no longer apparent. You are, consequently, also instructed to announce to the Secretary of State that the Imperial Government desire to make public the correspondence in question, believing that fuller and more accurate information regarding the matter will contribute to the final settlement of the controversy.

You are authorized, in carrying out the above instructions, to hand a copy of this Note to Mr. Bryan.

(June 26, 1914.)

ANNEX.

No. 1.

CALIFORNIA ALIEN LAND ACT.

An Act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this stae, providing for escheats in certain cases, prescribing the procedure therein, and repealing all acts or parts of acts inconsistent or in conflict herewith.

The people of the States of California do enact as follows:

Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States, except as otherwise provided by the laws of this state.

Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Section 3. Any company, association or corporation organized under the laws of this or any other state or nation, of which a majority of the members are aliens other than those specified in section one of this act, or in which a majority of the issued capital stock is owned by such aliens, may acquire, possess, enjoy and convey real property, or any interest therein, in this state, in the manner and to the extent and for the purposes prescribed by any treaty now existing between the government of the United States and the nation or country of which such members or stock-holders are citizens or subjects, and not otherwise, and may in addition thereto lease lands in this state for agricultural purposes for a term not exceeding three years.

Section 4. Whenever it appears to the court in any probate proceeding that by reason of the provisions of this act any heir or devisee can not take real property in this state which, but for said provisions, said heir or devisee would take as such, the court, instead of ordering a distribution of such real property to such heir or devisee, shall order a sale of said real property to be made in the manner provided by law for probate sales of real property, and the proceeds of such sale shall be distributed to such heir or devisee in lieu of such real property.

Section 5. Any real property hereafter acquired in fee in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to, and become and remain the property of the State of California. The attorney general shall institute proceedings to have the escheat of such real property adjudged and enforced in the manner pro-

vided by section 474 of the Political Code and title eight, part three of the Code of Civil Procedure. Upon the entry of final judgement in such proceedings, the title to such real property shall pass to the State of California. The provisions of this section and of sections two and three of this act shall not apply to any real property hereafter acquired in the enforcement or in satisfaction of any lien now existing upon, or interest in such property, so long as such real property so acquired shall remain the property of the alien, company, association or corporation acquiring the same in such manner.

Section 6. Any leasehold or other interest in real property less than the fee, hereafter acquired in violation of the provisions of this act by any alien mentioned in section two of this act, or by any company, association or corporation mentioned in section three of this act, shall escheat to the State of California. The attorney general shall institute proceedings to have such escheat adjudged and enforced as provided in section five of this act, In such proceedings the court shall determine and adjudge the value of such leasehold, or other interest in such real property, and enter judgement for the state for the amount thereof together with costs. Thereupon the court shall order a sale of the real property covered by such leasehold, or other interest, in the manner provided by section 1271 of the Code of Civil procedure.

Out of the proceeds arising from such sale, the amount of the judgement rendered for the state shall be paid into the state treasury and the balance shall be deposited with and distributed by the court in accordance with the interest of the parties therein.

Section 7. Nothing in this act shall be construed as a limi-

tation upon the power of the state to enact laws with respect to the acquisition, holding or disposal by aliens of real property in this state.

Section 8. All acts and parts of acts inconsistent, or in conflict with the provisions of this act, are hereby repealed.

No. 2.

Viscount Chinda to Mr. Bryan.

Imperial Japanese Embassy,
May 9, 1913.

Sir:

I have the honor to acquiant you that my Government have learned, with painful disappointment, of the measure recently passed by the Legislature of the State of California, on the subject of alien land tenure, and that they feel constrained to offer to the American Government, their earnest protest, which, in pursuance of their instructions, I now respectfully beg to lodge with you, against the new legislation.

In the opinion of the Imperial Government, the Act in question is essentially unfair and discriminatory, and it is impossible to ignore the fact that it was primarily directed against my countrymen. Accordingly, this protest is based upon the proposition that the measure is unjust and inequitable, and that it

is not only prejudicial to the existing rights of Japanese subjects, but is inconsistent with the provisions of the treaty actually in force between Japan and the United States, and is also opposed to the spirit and fundamental principles of amity and good understanding, upon which the conventional relations of the two countries depend.

It seems to the Imperial Government that the enactment in effect deprives my countrymen of the right to transmit to their legal heirs their already lawfully acquired landed property. Full right of such transmission was a right running with such property, when so acquired, and consequently the annulment of that right, at this time, is clearly in conflict with the third clause of Article I of the treaty, which guarantees to Japanese subjects, in reciprocity, the most constant protection for their property. Moreover, in its relation to house property, the legislation appears to be, in a much wider sense, repugnant to the provisions of the first clause of the same Article, by which Japanese subjects are granted, in reciprocity, and upon the same terms as American citizens, the right to own houses, manufactories, warehouses and shops. All exceptional limitations and restrictions upon or in respect of that right, either in the matter of its transmissibility or otherwise, are thus believed to be irreconcilable with the first and third clauses of Article I of the Treaty.

Again, in regard to the right of my countrymen to lease land for residential and commercial purposes, all limitations and restrictions upon the right contained in the Act, which are not equally applicable to American leaseholders, are, it seems, also contrary to the treaty provisions above referred to.

I beg further to point out that the provisions of the enactment relating to companies, associations and corporations appear to be no less objectionable. Thus, in case an association, in proceeding to dissolution, decides to distribute among its members any real property now owned by it, all Japanese members would, in discrimination, be excluded from such distribution in abridgment of their vasted rights. Other instances of grave injustice in disregard of already existing rights of my countrymen may readily be imagined, more especially in case of an institution, whose stock is purchasable in the open market. For instance, lawful interests of Japanese subjects in such an institution might become liable to escheat without any unlawful act on their part, since the innocent purchase of its stock by aliens of other nationlities laboring under the same disabilities as the Japanese might lead to that result. But, practically speaking, the enforcement of the measure in question would have the effect of depriving my countrymen of the right to own any stock in any company, association or corporation liable to become possessed in California of any real property or any interest therein, for no business man of ordinary business acumen and prudence would take the hazard of confiscation. Nevertheless, such hazard would exist in view of that Act, notwithstanding the parity engagement on the subject of trade contained in Article I and the most favored nation stipulation in all that concerns commerce appearing in Article XIV of the Treaty.

Further, the Act provides in effect that aliens ineligible to citizenship may acquire, possess, enjoy or transfer real property or any interest therein, only in the manner, and to the extent,

and for the purposes prescribed by any treaty now existing between the United States and the country of which such aliens are subjects or citizens. Apart from the question as to whether the term "any treaty now existing" is intended to cover any treaty which may hereafter be concluded in supplement to, or in supersession of, the existing compact, it frequently happens that two friendly nations cease to have any commercial treaty in force between them, without impairing in the least their mutual relations of amity and goodwill. Should such contingency present itself in the intercourse of Japan and the United States, Japanese subjects will apparently be denied all rights relating to real property in California, now guaranteed by the treaty, whereas aliens eligible to citizenship are placed on the national footing, in the matter of such property rights, independently of treaty engagements. Accordingly, the security of the rights acquired lawfully and in good faith by the Japanese would, under the new enactment, be in constant and serious danger, from which aliens eligible to citizenship are safely guarded. Those just rewards of long and honest toil, upon which so many Japanese families depend for their livelihood, might be deprived of all protection under the Act, by causes for which they are in no way responsible.

It may be contended by the framers and supporters of the Bill, that in the event of any concrete cases arising, in which the Japanese find that their rightful claims are disregarded, it will be open for the aggrieved parties to resort to ordinary process of law for remedy. Considering, however, that such process necessarily involves much delay of time and great hardships for the parties in interest, and that those disadvantages will be

wholly unknown in respect of aliens whose eligibility to citizenship has never been called in question, it will be readily conceded that the enactment will operate in effect as a discrimination against my countrymen whose right to become American citizens has not yet been definitively established.

The Imperial Government, while reserving for future consideration other objectionable features of the enactment in question, desire to have it made entirely clear that they attach the utmost importance to the discriminatory phase of the legislation in those affairs of ordinary international commercial concern, in which nations usually accord to peaceful and friendly aliens equal treatment either as a matter of comity or by application of the principle of the most favored nation clause.

The sympathetic and accommodating disposition, with which the American Administration has invariably extended its helping hands to the Imperial Government, in the cause of humanity and international good understanding, encourages them in the hope that the present difficulties will be set at rest in a manner worthy of the historic relations of cordial friendship between the two neighboring nations.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) S. CHINDA.

No. 3.

Mr. Bryan to Viscount Chinda.

Department of State,
May 19, 1913.

Excellency:

I have the honor to acknowledge the receipt of your note of May ninth, laying before my Government the representations of the Imperial Government of Japan with regard to the law just adopted by the State of California concerning the holding of agricultural lands by aliens.

The Government of the United States regrets most sincerely that the Imperial Government of Japan should regard this legislations as an indication of unfriendliness towards their people. Being apprised while that measure was still under consideration by the legislature of California that that might be the feeling of the Imperial Government, the President and I very earnestly attempted to induce the legislative authorities of California to reconsider or to modify their plans in the matter, urging that the State should not act as a separate unit in this case but, rather, in co-operation with the federal government. Under the Constitutional arrangement of the United States we could do no more than that.

At the same time, we feel that the Imperial Government has been misled in its interpretation of the spirit and object of the

legislation in question. It is not political. It is not part of any general national policy which would indicate unfriendliness or any purpose inconsistent with the best and most cordial understanding between the two nations. It is wholly economic. It is based upon the particular economic conditions existing in California as interpreted by her own people, who wish to avoid certain conditions of competition in their agricultural activities.

I have not failed to observe that your note calls attention to certain provisions of the California law which you conceive to be inconsistent with and to violate existing treaty stipulations between the two countries, and thus to threaten to impair vested rights of property. The law, however, in terms purports to respect and preserve all rights under existing treaties. Such is its declared intent. But in case it should be alleged that the law had in its operation failed to accomplish that intent, your Government is no doubt advised that by the Constitution of the United States the stipulations of treaties made in pursuance thereof are the supreme law of the land, and that they are expressly declared to be binding upon state and federal courts alike to the end that they may be judicially enforced in all cases. For this purpose the courts, federal and state, are open to all persons who feel themselves to have been deprived of treaty rights and guarantees; and in this respect the alien enjoys under our laws a privilege which to one of our own citizens may not be in all cases available, namely, the privilege of suing in the federal courts. In precisely the same way, our citizens resort and are obliged to resort to the courts for the enforcement of their constitutional and legal rights. Article XIV of the treaty, to which Your Ex-

cellency refers, appears to relate solely to the rights of commerce and navigation. These the California statute does not appear to be designed in any way to affect. The authors of the law seem to have been careful to grand against any invasion of contractual rights.

Your Excellency raises, very naturally and properly, the question how the case would stand should explicit treaties between the two countries expire or cease to be in force while, nevertheless, relations of entire amity and good will still continued to exist between them. I can only reply that in such circumstances the Government of the United States would always deem it its pleasure, as well as a manifest dictate of its cordial friendship for Japan and the Japanese people, to safeguard the rights of trade and intercourse between the two peoples now secured by treaty. I need not assure Your Excellency that this Government will co-operate with the Imperial Government in every possible way to maintain with the utmost cordiality the understandings which bind the two nations together in honor and in interest. Its obligations of friendship would not be lessened or perfumed in niggardly fashion in any circumstances. It values too highly the regard of Japan and her co-operation in the great peaceful tasks of the modern world to jeopard them in any way; and I feel that I can assure Your Excellency that there is no reason to feel that its policy in such matters would be embarrassed or interfered with by the legislation of any state of the Union. The economic policy of a single state with regard to a single kind of property cannot turn aside these strong and abiding currents of generous and profitable intercourse and good feeling.

In conclusion let me thank Your Excellency for the candor with which you have dealt with this Government in this matter and express the hope that this episode in the intercourse of the two great countries which we represent will only quicken our understanding of one another and our confidence in the desire of each to do justice to the other.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) W. J. BRYAN.

No. 4.

Viscount Chinda to Mr. Bryan.

Imperial Japanese Embassy,
June 4, 1913.

Sir:

I did not fail to transmit to my Government at once by cable a copy of the note which you did me the honor of adressing to me under date of the nineteenth ultimo in reply to mine of the nineth idem with regard to the law recently enacted by the State of California on the alien land tenure.

That reply did not, I regret to say, have the effect of lessening the sense of disappointment and grave concern experienced by

the Imperial Government in consequence of the legislation to which it had reference. Having in view the attitude and action of deep sympathy expressed and taken by the American Administration in the matter, while the measure was still pending in the Legislature of California, the Cabinet at Tokio had good reason, it was thought, to expect some intimation of willingness, on the part of the American Government, to co-operate with the Government of Japan in the endeavor to find satisfactory solution of the problem, instead of the suggestion that the Courts of the United States were open to those of my countrymen who might feel themselves to have been deprived of treaty rights and guarantees.

The persons prejudicially affected by the enactment complained of are expressly limited to those aliens who are not eligible to citizenship. Considering that Japanese subjects are, as a nation, apparently denied the right to acquire American nationality, that they are the principal sufferers from that enactment, and that the avowed purpose of the law was to deprive my countrymen of the right to acquire and to possess landed property in California, the Imperial Government are unable to escape the conclusion that the measure is unfair and internationally racially discriminatory, and, looking at the terms of the treaty between our two countries, they are equally well convinced that the Act in question is contrary to the letter and spirit of that compact, and they moreover believe that the enactment is at variance with the accepted principles of just and equal treatment upon which good relations between friendly nations must, in the final analysis, so largely depend.

Nor can my Government find in the new law, as you have done, any declaration of the intention to respect and preserve

all rights under existing treaties. It is quite true that Section 2 of the Act provides in effect that aliens not eligible to citizenship may acquire, possess, enjoy and transfer real property, or any interest therein, to the extent and for the purposes prescribed by any treaty now existing between the United States and the country of which such alien is a citizen or subject, and not otherwise. But, in the opinion of the Imperial Government, that provision cannot be reconciled with the treaty stipulations to which they appealed in my former note, and to which they again appeal in this communication. Japanese people own real property, and other interests therein, in California under the existing treaty, as well as in accordance with law. Such property, having been duly acquired, is unquestionably entitled, in virtue of the treaty, to the same "most constant protection and security" as similar property belonging to citizens of the United States. Efforts were no doubt made to bring the measure into accord with the existing treaty stipulations, so far as that could be done consistently with the real purpose of the enactment. But having regard to the pronouncement obtained in Section 7 of the Act, it may be doubted, whether the Legislature of California considered it absolutely essential to respect the treaty engagements bearing on the subject of alien land ownership, in so far as those engagements could not be reconciled with the wishes of the State in the matter.

In these circumstances, it becomes my duty, under instructions form my Government, to announce to you that the Imperial Government are compelled, much to their regret, to maintain, in its integrity, the protest contained in my previous note on this subject.

I beg to point out, in this connection, that my Government cannot regard as responsive to the actual situation the suggestion contained in your note to the effect that Japanese people are at liberty to appeal to the courts of the United States for the enforcement of their Constitutional and legal rights. My countrymen who may suffer wrong in consequence of the enactment will no doubt look to those tribunals for relief. But I venture to make it entirely clear to your appreciation that the Imperial Government are firmly convinced that the phase of the controversy now under discussion is itself appropriately amenable to ordinary diplomatic processes. The question at issue is a question between the Government of Japan and that of the United States, as to the true intent and meaning of their existing treaty, and the extent to which the rules and principles of fair and equal treatment may, in comity and good conscience, be invoked in the present case. The wrong complained of is directed against my countrymen as a nation. It was committed by the authorities of a single State of the union, contrary to the expressed wishes and advice of the Federal Government. It is, nevertheless, to that Government alone, that Japan must look to have the wrong undone, since it is with that Government alone that the Imperial Government hold diplomatic intercourse.

The number of my countrymen actually affected by the discriminatory legislation complained of is small, and the quantity of landed property in California actually held by them, both as owners and leaseholders is very inconsiderable. On the other hand, it is a recognized fact that, as a result of a careful and conscientious enforcement of the existing understanding on the

subject of labor emigration from Japan to America, the Japanese population in the United States has, since that understanding took effect, shown an annual decrease. Accordingly, if the object of the legislation in question was wholly economic, then the conclusion is natural, it seems to the Imperial Government, that the apprehensions, upon which the enactment was based, were unjustifiable and without sanction of good reason, and, I trust, I may be permitted in the present context to add the suggestion that the law under discussion does not concern itself exclusively with agricultural lands. But, even if the basis of the Act had been wholly economic, that fact could not, in the opinion of my Government, be advanced, as a valid and sufficient reason, for annulling or abridging vested rights of property of my countrymen, and I beg to assure you that the Imperial Government have too high an opinion of the sense of right and justice of the American Government, to believe for a moment that that Government will permit a State to set aside the stipulations of the treaty or to impair the obligations of reciprocal friendly intercourse and good neighborhood.

In conclusion I beg, in pursuance of instructions from my Government, to invite your attention to the phase of the present question, to which, in the situation as it existed at the time my former note was adressed to you, it was not deemed either necessary or advisable to advert. I refer to the matter of Japanese naturalization in America in its relation to the question of Japanese land ownership. The provisions of law, under which it is held that Japanese people are not eligible to American citizenship are mortifying to the Government and people of Japan, since

the racial distinction inferable from those provisions is hurtful to their just national susceptibility. The question of naturalization, however, is a political problem of national, and not international, concern. So long, therefore, as the distinction referred to was employed in relation to rights of purely political nature, the Imperial Government had no occasion to approach the Government of the United States on the subject. But, when that distinction is made use of, as in the present case, for the purpose of depriving Japanese subjects of rights and privileges of a civil nature, which are freely granted in the United States to other aliens, it becomes the duty of the Imperial Government, in the interest of the relations of cordial friendship and good understanding between the two countries, to express frankly their conviction that the racial distinction, which at best is inaccurate and misleading, does not afford a valid basis for the discrimination on the subject of land tenure.

Accept, Sir, the renewed assurances of my highest consideration.

(Signed) S. CHINDA.

No. 5.

Special Memorandum handed to the President by Viscount Chinda, June 5, 1913.

The relations of geographic propinquity existing between Japan and the United States, coupled with the circumstance that both countries are steadily advancing along the same lines of peace and progress, make it entirely natural that the two people should come into broader and closer contact with each other, commercially, industrially and socially. The relation of neighborhood is inevitable and cannot be changed, even though the contact give rise to occasional worry and misunderstanding. In the actual and unalterable situation, therefore, the maintenance of relations of genuine friendship and good accord between the two nations, will contribute to the common benefit and material well-being of both, and that result, it should be added, will be assured, so long as each Power extends to the other, fair and equitable treatment in the field of legitimate activities. But difficulties are sure to arise, from which both countries will equally suffer, economically and in all the various avenues of peaceful intercourse, if such treatment is withheld. In these circumstances the two neighboring countries owe it to themselves, to their traditions and aspirations, to find means by which all causes of irritation and discord shall be peacefully and permanently removed. For this purpose it is essential that the inhabitants of both lands, should meet and

mingle in a spirit of mutual esteem, courtesy and toleration, and in their various dealings with each other, should be governed always, by the broad rules and precepts of justice and fair play, and, should, also, be careful to avoid all discriminatory treatment tending to hurt or wound the sense of national dignity of a self-respecting people. The Japanese people, although differing by accident, in race, from the inhabitants of America and Europe, are, nevertheless, possessed of the same susceptibilities, inspired by the same aims and aspirations, and guided by the same principles, and they contemplate with full consciousness their high duty among the nations, to contribute their best efforts in the great work of advancing the world's civilization and betterment. They welcome with warm appreciation, the expression of the high value which the United States attach to the maintenance of relations of good understanding between the two nations because in the full realization all that is meant by that expression, the Japanese Government confidently look to America—the land of noble aims and high ideals—for co-operation and encouragement, in their endeavors in the interest of general peace and harmony.

The Japanese Government fully appreciate the action taken by the Administration in the difficult question now under discussion between the two Governments and they earnestly hope that the President will be pleased to take the foregoing observations into favorable consideration.

No. 6.

Aide-Mémoire,

In Explanation and Support of Viscount Chinda's Note of June 4, 1913.

I.

The existing Japanese-American Treaty accords to Japanese subjects, in reciprocity, liberty in the United States to own and lease houses upon the same terms as citizens of the United States, and to lease land for residential and commercial purposes also upon the same terms as such citizens.

The words "to own" are words of the widest significance, and, in the context in which they appear in said Treaty, include, it is maintained, the right to acquire real property in question by all ordinary lawful means, viz., by purchase, by devise and by descent, and those words also, it is contended, cover the right to dispose of such real property, when duly acquired, by all various methods known to the law, viz., by sale, by gift, by bequest and by transmission. In other words, ownership carries with it, as a necessary incident full right of alienation. But all doubts on the subject will be removed, when it is considered, firstly, that the words "liberty to own" appearing in the Treaty are supplemented by a parity engagement, to the effect, "upon the same terms as American citizens," and, secondly, that the liberty so enjoyed by such citizens being full and complete, the corresponding liberty accorded to Japanese subjects is equally without limitation or qualification.

So too, liberty to Japanese subjects to lease land for residential and commercial purposes, upon the same terms as American citizens, naturally carries with it the same freedom in the matter of acquiring and disposing of the leased property.

Again, under the laws actually in operation in California (the new alien land enactment does not take effect until August 10), Japanese subjects have full right to take hold and dispose of all real property and interest therein. That right carries with it the capacity to bequeath and transmit such property.

The Treaty now in force also guarantees to Japanese subpects, in reciprocity, the same most constant protection and security for their property in the United States, that is there enjoyed by American citizens in respect of property belonging to them.

The Treaty of 1894, which was superseded in 1911 by the present one, provided in Article 1 that, in whatever relates to the succession to personal estate by will or otherwise, and the disposal of property of any sort and in any manner whatsoever, which they may lawfully acquire, the subjects or citizens of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties and rights as native subjects or citizens, or subjects or citizens of the most fabored nation.

Confidently relying upon the foregoing treaty and statutory provisions, Japanese subjects have become owners and lessees of land and houses in California, and the real property so acquired has, for all purposes, become fully vested in such owners. It was in the presence of this state of things that the new alien land law was enacted. It, in effect, deprives all Japanese subjects of the capacity to bequeath and transmit their duly acquired any real

property or interest therein, and it also denies to such subjects the capacity to acquire any real property or interest therein by devise or by descent. The measure also contains no less objectionable features concerning companies, associations and corporations, but, as this Aide-Mémoire is designed to deal exclusively with the provisions of the law which trench upon individual rights, the clauses relating to legal persons are, for the present, reserved.

It is the firm conviction of the Imperial Government that the provisions of the statute in question, which are intended either to abridge treaty rights of Japanese subjects in the matter of acquisition and disposition of real property and interest therein, or to unsettle real estate titles already duly vested under the laws of California, are contrary to the express stipulations of the Treaty now in force between Japan and the United States in the following respects:

(*a*) That, so far as the Act takes away from Japanese subjects the capacity, hitherto freely enjoyed by them, to acquire, by devise and descent, houses for all purposes, and leasehold of land for residential and commercial purposes, it is in conflict with the first clause of Article I of said Treaty, since that clause accords to Japanese subjects liberty to own houses and to lease land upon the same terms as American citizens, and it will not be contended that the liberty of such citizens in that respect has been annulled or abridged;

(*b*) That, so far as the Act deprives Japanese subjects of the capacity to bequeath and transmit to their devisees and

heirs real property and interest therein, duly acquired by them under said Treaty, it is inconsistent with the first and third clauses of Article I, since, in addition to the guarantee of equal treatment which is contained in the first clause above-mentioned, property of Japanese subjects is, by the third clause aforesaid, assured of the same most constant protection, the same equal protection of equal laws, that is accorded to the property of American citizens, and it goes without saying that property rights of such citizens still remain complete and undisturbed; and

(*c*) That, so far as the Act takes away from Japanese subjects the capacity of bequeathing and transmitting real property and interest therein, already duly acquired by them under the laws of California, it is repugnant to the above-mentioned third clause of Article I of the Treaty, since it impairs obligations of the contracts under which such property was acquired and is held, and thus deprives Japanese subjects of that equal protection for their property, which the Treaty extends to them.

The Imperial Government are also of the opinion that the Act in question, so far as it takes away from Japanese subjects the right to dispose, in any manner whatsoever, of the real property or interest therein, lawfully acquired by them prior to July 17, 1911, is in impairment of vested rights created under the Treaty of 1894.

The foregoing propositions are made with the greater confidence, since it is found that the principles upon which they rest are fully sustained by the line of decisions of the Supreme Court

of the United States, which have contributed to the just renown of that high tribunal.

The decisions to which, in the present relations, the Imperial Government especially refer are found in the following cases:

Fairfax's devisees v. Hunter's leasee.

Chirac v. Chirac.

Orr v. Hodgson.

Society for the Propagation of the Gospel v. Town of New Haven.

Geoffroy v. Riggs.

The Chinese Exclusion case.

In Chirac v. Chirac, Society for the Propagation of the Gospel v. Town of New Haven, and the Chinese Exclusion case, as well as in Watson v. Donnelly (New York Supreme Court, 1859), the principle was clearly announced that duly vested rights, acquired under a treaty, still continue, although the treaty itself is abrogated.

II.

The Imperial Government are equally convinced that the provisions of the land legislation in question are irreconcilable with the spirit and intent of the Japanese-American Treaty, as well as inequitable and at variance with the generally accepted principles which regulate commercial intercourse between friendly states, because such provisions discriminate against Japanese subjects, not only as compared with American citizens, but as compared with subjects of other countries, in a matter in which, inter-

nationally speaking, aliens are usually placed on national or most favored nation footing.

While, in the relations between states, the principle of equal treatment is sometimes made amenable to exceptions and qualifications, this is the first instance, it is believed, in which a Power, having in force a reciprocal commercial treaty with a clause guaranteeing most favored nation treatment "in all that concerns commerce and navigation," has ever been placed by the other Contracting State at a disadvantage as compared with non-treaty countries, in matters which, in the treaty, are made the subject of reciprocal concession.

International discriminations are in any case obnoxious, and, if carried beyond limits of actual and recognized necessity, are harmful to international good relations, independently of the question whether they are repugnant to treaty stipulations or not. In the definition of those permissible limits, and in the establishment of the principle of equal opportunity, no country has taken a firmer stand or exercised a more powerful influence than the United States. Thus in 1879, the Secretary of State at Washington, in an instruction addressed to the American Minister in Mexico, announced that "a Mexican statute discriminating against citizens of the United States and other aliens in respect to the capacity to hold real estate in Mexico is in conflict with the Treaty of 1831." (Dr. Moore's International Law Digest, Volume VI, page 702). The treaty, so appealed to, contains no express provisions on the subject of ownership of real estate. It reciprocally accords most favored nation treatment in respect of commerce and navigation, and grants the right of residence, of hiring houses

and warehouses for purposes of commerce, and of succession to personal estate, and it also extends protection to persons and property. Accordingly, it must be assumed that the discrimination complained of was in disregard of the spirit and purposes, rather than express words, of the treaty.

But unjust discriminations based upon race are still more objectionable. Russia's severe treatment of Jews has been deeply resented by the United States, and on December 13, 1911, the House of Representatives, by an unusual vote of 301 to 1, passed a resolution in strong condemnation of the action of Russia. The resolution declared:

> "That the people of the United States assert as a fundamental principle that the rights of its citizens shall not be impaired at home or abroad, because of race or religion; that the Government of the United States concludes its treaties for the equal protection of all classes of its citizens without regard to race or religion; that the Government of the United States will not be a party to any treaty which discriminates, or which, by one of the parties thereto is so construed as to discriminate, between American citizens on the ground of race or religion; that the Government of Russia has violated the treaty between the United States and Russia concluded at St. Petersburg December 18th, 1832, refusing to honor American passports duly issued to American citizens on account of race and religion."

And for these reasons, the resolution called upon the Presi-

dent to denounce said treaty. Three days after the adoption of the above resolution, the United States notified Russia of the termination of the treaty, saying that it had been recognized that the treaty was "no longer fully responsive, in various respects, to the needs of political and material relations of the two countries." The action of Russia, it seems, was not directed against American Jews exclusively. It applied equally to all alien Israelites, and, although resting largely upon race and religion, the discrimination complained of was inspired, in part at least, so Russia declared, by economic consideration. If, in the presence of this state of things, the United States Government found sufficient reason to object to Russia's action, then the Imperial Government have much stronger grounds for protecting against the invidious discrimination of the new California enactment, since those discriminations are, not only irreconciliable with express treaty stipulations, but, being national and racial, are in clear disregard of national susceptibilities.

III.

In a number of States, the right of aliens to hold real estate has been made to depend upon actual filing of declarations of intention to become citizens. That requirement, as a condition precedent to the exercice of the right in question, cannot be said to be unreasonable or illogical. A relation is thereby established between said right and eventual citizenship, because the continued existence of the right depends upon actual completion of the process of naturalization.

California is the only State, it is believed, in whcih the right of aliens to hold real property has been made to rest solely upon eligibility to citizenship. Such eligibility, in the context in which it is used, has no relation to the question of citizenship, snce no action looking to ultimate naturalization is required. The formula appearing in the new California enactment was employed as a convenient paraphrase to express firm intention to discriminate against Japanese subjects as compared with aliens belonging to white and African races in the matter of ownership of land and houses.

Clear and important distinction may, therefore, be said to exist between the laws of such other States and of California, on the subject of alien land tenure in this: by the laws of such other States, actual steps looking to ultimate naturalization have to be taken before the right of real estate ownership can be exercied; whereas, by the law of California, the capacity to take such steps is alone sufficient. The discrimination complained of is no less invidious and disregardful of the treaty rights of Japan, because of indirect language in which it is expressed.

IV.

It has been suggested that the power to deal with the question of alien real estate ownership in the United States belongs exclusively to the several States. Controlling decisions of the courts of the United States might be cited in refutation of that suggestion. But it is sufficient to point out that the United States accepted the first and third clauses of Article I of the existing

Japanese-American Treaty, as well as Article I of the Treaty of 1894, and that she can not have given her consent to those stipulations, if the power to regulate the question of ownership of real property by aliens was reserved exclusively to the State.

V.

The Imperial Government, in concluding their present study of the question of the recently enacted alien land law of California, desire to invite attention to the note from the Secretary of State to the American Minister in Brazil, dated March 5, 1875, on the subject of appropriate procedure in a case analogous to the present one. The language used in that note is so apposite, and supports in such a striking manner the position taken by Viscount Chinda in his communication of June 4, that indulgence is craved for quotng here the words of Mr. Fish:

> "The reference of the claimant to the authorities of the province for redress will not be acquiesced in. Those authorities cannot be officially known to this Government. It is the Imperial Government at Rio de Janeiro only which is accountable to this Government for any injury to the person or property of a citizen of the United States committed by the authorities of a province. The same rule would be applicable to the case of a Brazilian subject who, in this country, might be wronged by the authorities of a State." (Dr. Moore's International Law Digest Volume VI, page 816).

So far as the California enactment injuriously affects individual rights of Japanese subjects, the aggrieved parties will, no doubt, appeal to the Courts for redress. The question now under discussion between Japan and the United States involves interpretation of treaties, and, in the final solution of that question, the two Powers have an equal voice and interest. Consequently the only appropriate recourse at this time is diplomatic. In analogous cases, however, the United States has instituted legal proceedings in defence of existing treaties. The cases in point, to which references are made, are the California School and the Horcon Ranch cases. In both instances suits were brought by the United States in the Circuit Courts of the United States.

Japanese Embassy,
July 3, 1913.

No. 7.

Mr. Bryan to Viscount Chinda.

Department of State,
July 16, 1913.

Excellency:

I have had the honor to receive and carefully to consider the note which You Excellency was so good as to address to me under date of the 4th instant on the subject of the recent act of

the legislature of California relating to the tenure of lands by aliens in that State.

I am pained to learn that the Imperial Government, after reading the contents of my note of the 19th of May, in reply to their protest, continue to be of opinion that the act in question is not only unfair but "internationally racially discriminatory;" that it is "contrary to the letter and spirit" of the treaty between the two countries; and that it is at variance with "the accepted principles of just and equal treatment upon which good relations between friendly nations must, in the final analysis, so largely depend."

In my note of the 19th of May, I did not omit to point out that the California statute, far from being indicative of any national discriminatory policy, was not even to be regarded as an expression of political or racial antagonism but was rather to be considered as the emanation of economic conditions, which were in this instance of a local character. I can not help feeling that in the representations submitted by Your Excellency the supposition of racial discrimination occupies a position of prominence which it does not deserve and which is not justified by the facts. I am quite prepared to admit that all differences between human beings—differences in appearance, differences in manner, differences in speech, differences in opinion, differences in nationality, and differences in race—may provoke a certain antagonism; but none of these differences is likely to produce serious results, unless it becomes associated with an interest of a contentious nature, such as that of the struggle for existence. In this economic contest, the division no doubt may often take place on racial lines, but it does so not because of racial antagoism, but because of the

circumstance that the traditions and habits of different races have developed or diminished competitive efficiency. The contest is economic; the racial difference is a mere mark or incident of the economic struggle.

All nations recognize this fact; and it is for this reason that each nation is permitted to determine who shall and who shall not be permitted to settle in its dominions and become a part of the body politic, to the end that it may preserve internal peace and avoid the contentions which are so likely to disturb the harmony of international relations.

That the Imperial Government of Japan accept and act upon these principles precise proof is not wanting.

By the Imperial Ordinance No. 352 of 1899, which is understood to be still in force, it is provided:

"Article 1. Foreigners, even those who either by virtue of treaty or custom have not freedom of residence, may hereafter reside, remove, carry on trade and do other acts outside the former settlements and mixed residence districts. Provided that in the case of laborers they cannot reside or carry on their business outside the former settlements or mixed residential districts unless under the special permission of the administrative authorities.

"The classes of such laborers (referred to in the preceding paragraph) and details for the operation of this Ordinance shall be determined by the Minister for Home Affairs."

The Department is advised that this Ordinance was promulgated in order to prevent the immigration of Chinese laborers, who were attracted to Japan by the rise of wages which began in that country after the war with China and has continued ever since. As a result of this rise in wages conditions grew up not unlike those which have existed at certain places in the United States, the objection made in Japan to Chinese laborers being that they worked for lower wages than the natives. In the summer of 1907, as the Department is advised, two groups of Chinese laborers were excluded from Japan under the application of the Ordinance above-mentioned, one of the excluded groups being composed of coolies, the other of skilled artisans such as mechanics. The Department is not advised that the Ordinance has been or is enforced as against laborers other than Chinese. The Department is, however, far from imputing to the Imperial Government in its enforcement of the Ordinance a design to make a racial discrimination. On the contrary, the Department assumes that the question with which the Imperial Government were seeking to deal was in its essence economic and racial only incidentally, and that this would continue to be the case even if the Ordinance, although it was no doubt originally designed to exclude Chinese laborers, should be applied to laborers of another race.

In certain statements in Your Excellency's note, to which I have heretofore adverted, I am obliged to think that due weight has not been given to the provisions of the treaties between the two countries. Your Excellency is so good as to say that, "looking at the terms of the treaty between our two countries," the Imperial Government are convinced that the California statute "is

contrary to the letter and spirit of that compact," and that they also believe that the statute is "at variance with the accepted principles of just and equal treatment."

In these passages two questions apparently distinct and possibly inconistent are introduced together; for, 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.

The treaty to which Your Excellency's note refers is that which was signed at Washington on February 21, 1911, by Mr. Knox, Secretary of State, representing the United States, and by Baron Uchida, your immediate predecessor, representing the Imperial Government.

This treaty was based upon a draft presented by the Imperial Government. In Article I of this draft there is found the following clause:

> "3. They (the citizens or subjects of the contracting parties) shall be permitted to own or hire and occupy the houses, manufactories, warehouses, shops and premises which may be necessary for them, and to lease land for residential, commercial, industrial, manufacturing and other lawful purposes."

It will be observed that in this clause, which was intended to deal with the subject of real property, there is no reference to the ownership of land. The reason of this omission is understood to be that the Imperial Government desired to avoid treaty engagements concerning the ownership of land by foreigners and to regulate the matter wholly by domestic legislation.

In the treaty as signed the rights of the citizens and subjects of the contracting parties with reference to real property were specifically dealt with (Art. I.) in the stipulation that they should have liberty "to own or lease and occupy houses, manufactories, warehouses and shops," and "to lease land for residential and commercial purposes." It thus appears that the reciprocal right to lease land was confined to "residential and commercial purposes," and that the phrases "industrial" and "other lawful purposes," which would have included the leasing of agricultural lands, were omitted.

The question of the ownership of land was, in pursuance of the desire of the Japanese Government, dealt with by an exchange of notes in which it was acknowledged and agreed that this question should be regulated in each country by the local law and that the law applicable in the United States in this regard was that of the respective States. This clearly appears from the note of Baron Uchida to Mr. Knox of February 21, 1911, in which, in reply to an inquiry of the latter on the subject Baron Uchida said:

> "In return for rights of land ownership which are granted Japanese by the laws of the various states of the

United States (of which, I may observe, there are now about thirty) the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to *American citizens from all the States, reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate States.*"

In quoting the foregoing passage I have italicized the last clause for the purpose of calling special attention to the fact that the contracting parties distinctly understood that, in conformity with the express declaration of the Imperial Japanese Ambassador, the right was resereved to maintain as to land ownership the condition of reciprocity in the sense that citizens of the United States, coming from States in which Japanese might not be permitted to own land, were to be excluded from the reciprocal privilege in Japan.

From what has been pointed out it appears to result, first, that the California statute, in extending to aliens not eligible to citizenship of the United States the right to lease lands in that State for agricultural purposes for a term not exceeding three years, may be held to go beyond the measure of privilege established in the treaty, which does not grant the right to lease agricultural lands at all; and, secondly, that, so far as the statute may abridge the right of such aliens to own lands within the States, the right has been reserved by the Imperial Government to act upon the principle of exact reciprocity with respect to citizens of the individual States. In a word, the measure of

privilege and the measure of satisfaction for its denial were perfectly understood and accepted.

In connection with the question of land ownership Your Excellency refers to the subject of naturalization in the United States; and in this relation I observe Your Excellency's statement that "Japanese subjects are, as a nation, apparently denied the right to acquire American nationality." Your Excellency further declares that the provisions of law, under which it is held that Japanese are not eligible to American citizenship, "are mortifying to the Government and people of Japan, since the racial distinction inferable from those provisons is hurtful to their just national susceptibilities." Your Excellency very properly acknowledged the fact that the question of naturalization "is a political problem of national and not international concern."

I gladly assume that Your Excellency, in saying that Japanese subjects are "as a nation" denied the right to acquire American nationality, has not intended to convey the impression that the naturalization laws of the United States make any distinction that may be specifically considered as national eihter in terms or in effect. Nor would it appear, if the legal provisions in question were historically examined, that the Government and people of Japan have any ground to feel that any discrimination against them was intended. But, as the fact is acknowledged in Your Excellency's note that the question of naturalization "is a political problem of national and not international concern," I infer that Your Excellency is not instructed to press the matter, and I will forbear to enter into a more extended discussion of it on the present occasion.

In the note of Your Excellency an apprehension is expressed that, in spite of the fact that the California statute purports to assure to aliens the right to hold real property in the manner and to the extent and for the purposes specified in any treaty, the terms of the law may be found to abridge not only rights of property falling within the terms of the existing treaty but also rights of property acquired in conformity with law theretofore. This Department, however, does not doubt that full protection will be extended by the courts to all vested rights of property. And I desire to add that if a case should ever be disclosed in which it was maintained by the Imperial Government that the existing property rights of one of its subjects had been impaired by the statute, this Government would stand ready to compensate him for any loss which he might be shown to have sustained, or even, in order to avoid any possible allegation of injury, to purchase from him his lands at their full market value prior to the enactment of the statute.

In conclusion, I have the honor to assure Your Excellency that the subjects of His Imperial Majesty will, as stated in my previous note, find in the courts of the United States, in the manner provided by the Constitution of the United States, full protection for all their legal rights; and I desire further to assure you that this Government will through its proper officials stand ready at all times to use its good offices to secure the prompt and efficacious determination of such suits. In this manner our Governments will co-operate for the preservation of the traditional friendship and mutual consideration which have ever characterized the relations of amity and good will that have prevailed between the

Governments and peoples of the two countries.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) WILLIAM JENNINGS BRYAN.

No. 8.

Aide Mémoire.

Viscount Chinda's Aide Mémoire is presented apparently in pursuance of a telegram received on June 30th from the Imperial Minister for Foreign Affairs. In this telegram the statement is made that the larger part of the land actually owned by Japanese in California was acquired before July 17th, 1911, the effective date of the existing treaty; and certain decisions of the Supreme Court of the United States, in Chirac v. Chirac, 2 Wheaton, 259, and other cases are invoked as guaranteeing rights of property which were acquired by Japanese subjects in the United States, while the treaty of 1894 was in operation.

The Department, following the example set in the Aide Mémoire, refrains from entering on the present occasion into a minute analysis of each of the judicial decisions thus cited. The Department, however, accepts the enunciation of principle, quoted from the decision in Chirac v. Chirac, "that a right once vested does not require, for its preservation, the continued existence of the power by which it was acquired"; and that "if a treaty, or

any other law, has performed its office by giving a rights, th expiration of the treaty or law cannot extinguish that right. The Department has already observed, in its reply to Viscoun Chinda's note of the 4th of June, and now repeats, that it doe not doubt that full protection will be extended by the Courts t all vested rights of property.

So far as the Aide Mémoire relates to rights secured by th existing treaty of 1911, the Department may again recur to th fact that, by Section 2 of the California statute, it is provided tha aliens not eligible to citizenship under the laws of the Unite States "may acquire, possess, enjoy and transfer real propert or any interest therein in this State in the manner and to th extent and for the purposes prescribed by any treaty now existin between the Government of the United States and the nation o country of which such alien is a citizen or subject." As thi clause in express terms requires the recognition of any right secured by existing treaty, it is not to be assumed that any right so secured would not be fully protected.

The Aide Mémoire, however, appears to extend too far th theory that the ownership of property carries with it a veste right to dispose of such property in all the ways in which pro- perty may be transferred, by sale, by gift, by devise, or by descent, without future limitation or restriction. Such a theory would render it impossible for a country to alter its laws with regard to the transmission of property. So far as the Department is advised it has never been held that a right of ownership, vested either in a citizen or in an alien, would be impaired by a change in the law denying to any and all aliens the right to purchase lands.

Such changes in the law have not been infrequent either in the United States or elsewhere, and it is believed that they have not been held to impair vested rights. If such rights are not impaired by forbidding alienation or transmission to all aliens, they are obviously not impaired by the prohibition of alienation or transmission to particular classes of aliens. Attention may be in this relation be drawn to numerous treaties between the United States and other Powers by which it is provided that where, on the death of the owner, real estate in the territories of the one Power would descend upon a citizen of the other who is disqualified by alienage from taking, the latter shall be allowed a period, varying according to the stipulations of the treaties, to sell the land and withdraw the proceeds. These stipulations clearly recognize the fact that the rights of ownership is not regarded as carrying with it an unlimited and unalterable right of disposition or descent.

The Aide Mémoire, recurring to the "spirit and intent" of the existing treaty rather than to its particular stipulations, maintains that the provisions of the California statute discriminates against Japanese subjects "in a matter in which, internationally speaking, aliens are usually placed on national or most favored nation footing." The Department regrets that it is unable to admit that the assumption here made is well founded. Without entering minutely into an examination of conventional stipulations, the Department desires to point out that the alien ownership of land has seldom been treated in the practice of the United States as a matter of most-favored-nation treatment. The most-favored-nation clauses in the treaties of the United States have almost universally related to matters of commerce and navigation.

In only a few cases, perhaps not more than two or three, h alien ownership been conceded by means of a most-favored-nati clause. With these exceptions the rights of alien ownership h been secured only by special treaty stpulations, with the resu that the citizens of countries not having such treaties with t United States were unable to enjoy the right of ownership.

In this relation the Aide Mémoire quotes from Moore Digest of International Law, Vol. 6, page 702, a summary to t effect that "a Mexican statute discriminating against citize of the United States and other aliens in respect to the capaci to hold real estate in Mexico is in conflict with the treaty of 1831.

The Department desires to deal with the subject to whic the foregoing summary relates, as it does with all other matte with entire candor. The Aide Mémoire correctly states that t treaty of 1831 contains no express provision on the subject o ownership of lands and that the most-favored-nation clauses whic it contains relates only to commerce and navigation and to certai other matters in which the holding of real estates is not include Nevertheless, the Government of the United States then essaye to make the same argument which is now so strongly urged i behalf of the Imperial Government, but was in the end oblige practically to abandon it. The facts are as follows:

The remonstrance or protest of the United States related t certain Mexican laws restricting the right of alien ownership o lands and particularly to the law of July 20, 1863, which contain the following Article:

"2. Any inhabitant of the Republic has the right to denounce up to two thousand five hundred hectares, and and no more, of public lands, with the exception of the natural born and naturalized citizens of nations adjoining the republic who, by no title whatever, can acquire public lands in the States bordering the said Nations."

That this Department on the occasion in question went the full length of the present Japanese contention is conclusively shown by the text of its instruction dated June 23, 1879, which reads as follows:

"The discrimination in this respect between those citizens and other foreigners, is still believed to be invidious, unnecessary, at variance with the treaty and quite incompatible with those friendly relations which the obvious interest of both countries requires should be maintained between them.

"The Mexican law of 1863 is specially invidious toward citizens of our border States, because it practically discriminates against them by name, and thereby stigmatizes them as unworthy to have the privilege of holding real estate. This stigma can not be acquiesced in by this Government, which does not admit the right of any foreign power to discriminate between citizens of different States of this Union, who can only be known abroad as citizens of the United States. It may be that the treaty of 1831 does not expressly confer upon citizens of the parties the right to hold real estate in their respective territories, nor does

may go with their vessels and cargoes to any market, port or river of the Republic to which other forigners are admitted, nor are said citizens prevented from renting houses and ware-houses for the purposes of their commerce, nor are they prevented from dealing in all kinds of products, manufactures and goods, nor are they obliged to pay higher duties, imposts or emoluments than are paid by the citizens of the most-favored nations, nor is there anything, in a word, conceded to the latter with respect to navigation and commerce which is denied to North American citizens.

"On the other hand, the equality of privileges, exemptions and rights with the most-favored nations, stipulated with the United States in Art. 3rd of the treaty of 1831 refers to navigation and commerce; but although it should extend to another subject (capitulo), that equality should be understood to be under circumstances also equal, and with reference to the acquisition of lands in the frontier States, it can not be sustained that the United States which adjoin Mexico are in the same condition as the nations of Europe or of South America, for instance.

"I should at the same time call the attention of Your Excellency to the exception contained in the law of July 20th, 1863, which is the most preemptory disposition referred to by the clause of the contract which gave rise to this note, which should not be considered as referring exclusively to the citizens of the United States, as it also comprehends those of the neighboring Republic of Guate-

mala, having the same conditions of boundary with Mexico; hence there is not nor can there be any justifiable motive for the Government of the United States to consider the prohibition established by the aforesaid law as an exclusion injurious to its citizens, and which refers to the nations bordering on the Republic."

It was in reply to this exposition of the law by the Mexican Government, which had been called forth by previous representations on the part of the United States, that the instructions above quoted, of subsequently date, were sent. They were duly communicated to the Mexican Government. On August 20, 1879, the Minister of the United States in Mexico wrote to the Department as follows:

"On the 17th ultimo I communicated to the Mexican Foreign Office in a note of that date the substance of your dispatch No. 646, of June 23rd, relating to the prohibition to citizens of the United States from acquiring real estate and public lands in the Mexican border States.

"Up to this date I have received no acknowledgment of my note and I regard it as highly probable that no reply will be made thereto, neither have we any reason to expect that the policy of the Mexican Government on the subject will be changed, as a result of the protest you have directed me to make."

The forecast of the American Minister proved to be correct and the remonstrance of June 23, 1879, remaind unanswered. The law also remained unaltered.

The Aide Mémoire expresses the belief that the present instance is the first one in which a Power, being a party to a reciprocal commercial treaty guaranteeing most-favored-nation treatment "in all that concern commerce and navigation," has ever been placed by the other contracting party at a disadvantage, as compared with non-treaty countries, "in matters which, in the treaty, are made the subject of reciprocal concession." This passage seems to be blend two questions which are by no means interdependent. As is observed in the Department's note of the 16th instant, if the contracting parties have dealt with a certain subject by means of an express reciprocal agreement, it is hardly open to either party to assert that the adjustment thus made is not fair and equal, or that it is open to objection because it falls short of most-favored-nation treatment.

In the animadversions of the Aide Mémoire upon discriminatory legislation the Department desire to express a general concurrence. It must, however, be admitted that discrimination of one kind and another very widely prevail, and that it is often necessary to deal with them in a tolerant spirit in order that greater causes of irritation may be avoided. Perhaps in no case is it more essential to take this moderate view than in that of the ownership of lands.

The Aide Mémoire quotes a resolution of the House of Representatives of the United States on December 13, 1911, calling for the termination of the then existing commercial treaty between the United States and Russia, because of the refusal of the Russian Government, as the resolution declared, to admit American Jews generally to that country. This resolution, it may be observed,

was never communicated to the Russian Government and never assumed an international character. The passage quoted in the Aide Mémoire does not appear in the resolution adopted by Congress; and notice was, as the Aide Mémoire correctly states, given to Russia of the intention to terminate the treaty on the ground that it was "no longer fully responsive, in various respect, to the needs of the political and material relations of the two countries." The treaty was subsequently terminated, but, with this exception, the previous conditions continue and the discrimination complained of remains unchanged.

The Aide Mémoire refers to the California statute as discriminating against Japanese subjects "in the matter of ownership of lands and houses." The distinctions on this subject have been pointed out in the Department's note of the 16th instant, in which the meaning and effect of the clauses of the existing treaty are fully set forth. It may be repeated that the statute contains no discrimination against Japanese as such, but applies equally to all aliens not eligible to citizenship.

The Department, following the example of the Aide Mémoire, has forborne to enter into the dicussion of the various and sometimes intricate questions affecting corporations as compared with individuals. These are questions peculiarly appropriate for judicial examination; for, while it is held that a corporation is a "citizen" of, or has its "domicile" in, the State by which it was created, even though a majority of its stockholders may be citizens of other States or countries, yet these are matters more or less of legal regulation, and the rights, privileges and immunities of corporations are by no means co-extensive in all matters with those

of natural persons.

The Aide Mémoire refers to a suggestion that the question of alien ownership of land in the several States of the United States is beyond the reach of the treaty-making power. The Department desires only to say that such a suggestion has not come from the Government of the United States. The Aide Mémoire is correct in its statement that this subject has been dealt with by the treaty-making power, and that the provisions of the treaties on the subject have been upheld by the courts.

The Aide Mémoire quotes from an instruction of this Department of March 5, 1875, in which the Secretary of State of the United States declared, in a case arising in Brazil, that the Imperial Government at Rio de Janeiro must be held accountable for any injury to the person or property of a citizen of the United States committed by the authorities of a Province. The Department is not disposed to question the correctness of this view, but would call attention to the fact that, in the instruction referred to, the statement was made that, as the Governors of the Provinces in Brazil were appointed by the Imperial Government, "the latter may be regarded as specially responsible for their acts in all cases where the law of nations may have been infringed, *and justice may be unobtainable through the courts.*"

As is stated in Department's note of the 16th instant, the subjects of His Imperial Majesty will find in the courts of the United States, in the manner provided by the Constitution of the United States, full protection for all their legal rights, held under treaty or otherwise, and this Government will stand ready at all times through its proper officials to use its good offices to

secure the prompt and efficacious determination of such suits. Such appears to be the proper and feasible course in the present matter, in which questions of various kinds may arise, in respect of which it is scarcely possible to forecast the appropriate form of action. The courts of the United States, as is well known, deal only with actual questions, with actual infractions of rights, and not with infractions merely mooted or apprehended.

The California School Case and the Horcon Ranch Case presented questions of a different order from those now under consideration. In the California School Case a single and actual treaty question, not relating to a matter of property, had arisen, and was ready for adjudication. In the Horcon Ranch Case, a suit in equity was brought by the Government of the United States against an irrigation company for the purpose of preserving an international boundary to which the United States was directly a party. The United States is no doubt interested in the maintenance of all its treaties; but, as the numerous adjudicated cases cited in the Aide Mémoire clearly show, questions concerning private titles to land, whether, such titles be assured by treaty or not, are adjudicated upon the suit of the parties in interest, without any interposition on the part of the Government of the United States.

Not only is this the practice, but it is greatly to the advantage of individual suitors that is is so. As Governments not infrequently differ in the interpretation of treaties, the private individual, if dependent for judicial protection upon the motion of the Government within whose jurisdiction he asserts that his treaty rights are denied, might be deprived of an effective remedy altogether, in case that Government should hold that the treaty

was not violated. Moreover, the individual suitor, in presentin his arguments and allegations, is not restrained by the respon sibility which necessarily attaches to the declarations and con tentions of an immediate party to the international compact. Hi dependence upon the action of such a party would hamper hi efforts and diminish the opportunity for redress.

For these reasons the judicial defense of private rights, an particularly of rights of private property, even where they ma have vested under a treaty, is left to the suit of the individual concerned. In the present instance, however, this Governmen has offered to go beyond the usual practice and to use its goo offices to facilitate the progress of the judicial procedure, out o deference to the susceptibilities of a friendly Power to whom thi Government wishes ever to be bound by the closest ties of amit and respect.

Department of State,
Washington, July 16, 1913.

No. 9.

Baron Makino to Viscount Chinda.

Department for Foreign Affairs,
August 23, 1913.

(Telegraphic.)

The two communications addressed to you by the Honorab the Secretary of State on the sixteenth of July last, in further di

cussion of the question of the recently enacted alien land law of California, have been received and carefully considered by the Imperial Government.

That Act, by depriving the Japanese subjects of the right of land ownership, while freely continuing the right, not only in favor of the subjects and citizens of all the other Powers with which the United States maintains reciprocal treaty relations, but in favor of many non-treaty aliens, has established a discrimination of the most marked and invidious character against Japan. The measure is, moreover, in the opinion of the Imperial Government, unjust and inequitable, and contrary to the letter and spirit of the Japanese-American Treaty, as well as at variance with the accepted precepts governing and regulating the intercourse of good neighborhood, and, being admittedly *ex industria* discriminatory against this Empire as compared with other States, it is also mortifying to the nation and disregardful of the natural susceptibilities of the Japanese people.

This is the gravamen of Japan's complaint. The notes of the Honorable W. J. Bryan contain remarks in explanation and extenuation of the action of California, but nothing, in the estimation of the Imperial Government, which answers fundamentally to that complaint, or which tends to shake their conviction regarding the main question. If, as is confidently believed, the existing Treaty between Japan and the United States has been violated, there is but one remedy, and the Imperial Government are unable to escape the conclusion, that the duty of applying that remedy devolves solely upon the Government of the United States. As the measure complained of has, despite the protest lodged by

you, been permitted to go into operation, the Imperial Governme reserve for the present the further discussion of the questio at issue. There are, however, some statements and conclusion advanced by Mr. Bryan which the Imperial Government feel their duty forthwith to call in question. This instruction is d signed to answer those observations.

I hasten, in the first place, to say that the Imperial Gover ment do not for a moment imagine that the discrimination co plained of was the outcome of a national policy. They regar and have from the outset regarded, the action in question as a local character. But, whatever causes may have been responsib for the measure, it cannot be denied that, in its final manifesta tion, it is clearly indicative of racial antagoism. Nor, in th opinion of the Imperial Government, can any justification for suc enactment be found in the assertion that it was "the emanation economic conditions." It is the high office of modern treaties commerce to prevent undue international discriminations, and th most favored nation principle, which finds a place in nearly a such compacts, has had the effect, in an international sense, equalizing opportunities in all the various avenues of commercia and industrial life. It is true that special privileges are, in ex ceptional circumstances, sometimes granted by one nation in favo of another, but the present case stands out, it is believed, as th one single instance without historical parallel, in which a Stat maintaining, by treaty, the reciprocal most favored nation rela tions with another State, has ever, in a matter such as that unde discussion, essayed to discriminate against such other State, a compared with third Powers with which no such relations exis

The action of Mexico in 1863, which was so strongly condemned by the United States, furnishes no such parallel, since the law in that case was, it appears, based upon considerations of a geographic nature exclusively.

The Secretary of State denies the proposition advanced by you to the effect that the California statute discriminates against the Japanese subjects and that in the matter of land ownership, aliens are usually, internationally speaking, placed on national or most favored nation footing. In support of that denial, he cites the practice which prevails in the United States on the subject of alien land ownership, and he adds "that the citizens of countries not having such treaty with the United States (i. e. treaty granting, either expressly or by inference, under the most favored nation clause, the right of land ownership) were unable to enjoy the right of ownership." This statement has naturally caused surprise to the Imperial Government, and they confess their inability to understand it. It not only conflicts directly with the California law in question and is irreconcilable with the statutes of many states of the union by which the right of alien ownership is accorded independently of treaty stipulations, but it declares, in effect, that the discrimination complained of, which has been repeatedly recognized as a fact, is without foundation. In these circumstances, it is quite sufficient for the Imperial Government to repeat their contention that, by the California enactment, the Japanese subjects are denied the right of real estate ownership in localities in which that right is freely conceded to aliens belonging not only to the States which have no treaty engagements with the United States on the subject, but to the Powers which have no commercial treaties

whatever with the United States.

Recurring to the subject of the Mexican incident, I desire t say that the Imperial Government are unable, upon the recor in the case, to concur with Mr. Bryan in the view that the Unite States was, in the end, obliged practically to abandon its con tention. Reading in natural sequence the correspondence exchan ed between the United States and Mexico, the conviction is, it seem to me, irreprovable, that the quoted words of the Secretary o State on the occasion, instead of being regarded as an argumen must be accepted as the deliberate conclusion of the America Government on the subject.

It is unnecessary, it seems to me, to follow Mr. Bryan in hi remarks concerning the negotiations connected with the conclusio of the Treaty of 1911. It is sufficient to say that the reason, wh no stipulation regarding land ownership was inserted in the Treat is because neither Contracting Party desired at that time such stipulation, the United States equally with Japan. The assuranc contained in Viscount Uchida's note of February 21, 1911, on th subject of liberal interpretation of the Japanese land law, wa given at the instance of the United States, because of the conditio of reciprocity contained in that law. The assurance was given as stated in the note, "in return for the rights of land ownershi which are granted to Japanese by the laws of the various state of the United States."

The laws of Japan on the subject of alien land tenure ar not illiberal, but, in any case, they contain no provisions dis criminating, in any manner whatever, aginst the citizens of th United States. On the contrary, in all that relates to land owner

ship, as well as in the matter of all other civil rights, the American citizens, without distinctions and without conditions, are accorded in Japan full and complete most favored nation treatment, and there is no desire on the part of the Japanese administration to modify this state of things. What Japan claims is nothing more than fair and equal treament.

The Secretary of State, it is observed, dwells at length upon the subject of labor immigration into the United States, and, in the same relation, he refers to the action of Japan in circumstances somewhat analogous to those existing in America. The reason or necessity for this exposition is not understood by the Imperial Government. The question of immigration has nothing whatever to do with the present controversy, and any reference to it only tends to obscure that real issue. This announcement I wish to make very categorical. More than four years ago, the Imperial Government willingly co-operated with the American Government in adopting suitable measures in regulation of labor movements from Japan to the United States. The steps thus taken were entirely efficacious, so that, during the past three years, considerably more Japanese laborers left the United States than have entered that country. The Government of the United States has recognized and frankly admitted the sufficiency of the measures enforced by the Imperial Government in the matter. The Japanese Ambassador to the United States, at the time of the conclusion of the Treaty of 1911, declared under the authority of his Government that the Imperial Government were fully prepared to maintain with equal effectiveness, the limitation and control which were then exerted in regulation of the emigration of laborers to the

United States. Accordingly, in order to correct and finally dispel the popular error, I wish to say that there is no question whatever between Japan and the United States on the subject of the Japanese labor immigration into the United States. The present controversy relates exclusively to the question of the treatment of the Japanese subjects, who are lawfully in the United States, or may hereafter lawfully become resident therein consistently with the existing regulations. So far as such subjects are concerned, the Imperial Government claim for them fair and equal treatment, and are unable either to acquiesce in the unjust and obnoxious discrimination complained of, or to regard the question as closed so long as the existing state of things is permitted to continue.

You are requested to explain the substance of this instruction to the Secretary of State and deliver a copy.

テ解決セラレタルモノニアラスト認ムルモノナリ

貴官ハ國務長官ニ對シ本電訓ノ趣旨ヲ說明シ且其寫ヲ交付セラルル可シ

アルヤハ帝國政府ノ了解ニ苦ム所ナリ

移民問題ハ當面ノ爭議ト何等ノ交涉ナシ從テ玆ニ之ヲ援引スルハ徒ラニ問題ノ眞相ヲ曖昧ナラシムルニ過キス斯ノ點ハ本大臣ノ極メテ的確ニ言明シ置カント欲スル所ナリ今ヨリ四年有餘以前帝國政府ハ日本ヨリ合衆國ニ移住スル勞働者取締ノ爲適當ノ措置ヲ執ルノ件ニ關シ快ク米國政府ニ協力スル所アリシカ右ノ措置ハ能ク其效ヲ奏シ過去三箇年間ニ合衆國ヲ去レル日本勞働者ノ數ハ同期間ニ入國シタル者ノ數ヨリ遙ニ大ナルモノアルノ事實ヲ示セリ而シテ右帝國政府ノ勵行セル米國行勞働移民制限及取締ノ滿足ス可キモノタルハ合衆國政府ノ明白ニ承認セル所ニシテ帝國政府カ斯カル制限及取締ヲ從來ト均シク有效ニ維持スルノ覺悟ヲ有スルノ事實ハ曩ニ千九百十一年ノ條約締結ニ當リ華盛頓駐劄日本大使カ本國政府ノ委任ヲ受ケテ宣言シタル所ナリ故ニ世上ノ誤解ヲ匡シ且之ヲ一掃センカ爲本大臣ハ玆ニ日本勞働者ノ合衆國移住ノ件ニ關シテハ日米兩國ノ間ニ何等ノ問題存在セサルコトヲ言明セント欲スルモノナリ

現下ノ爭議ハ專ラ現ニ適法ニ合衆國内ニ在住シ又ハ現行法規ノ範圍内ニ於テ將來適法ニ在住スルコトアル可キ日本國臣民ノ待遇如何ノ問題ニ關ス而シテ上ニ述フル如キ帝國臣民ノ關スル限リ帝國政府ハ之ニ對シ公平ニシテ均等ナル待遇ヲ要求スルモノナリ從テ本件ノ問題タル不當ニシテ嫌忌スヘキ差別的待遇ニ服從スル能ハサルハ勿論苟モ現事態ノ存續スル限リ本問題ハ決シ

傾聽スルノ必要ナキカ如シ右ニ對シテハ該條約中ニ土地所有ニ關スル規定ノ挿入セラレサリシハ日米兩國共ニ齊シク斯ル規定ノ挿入ヲ希望セサリシカ爲ノミトイフヲ以テ十分ナリト信ス內田子爵カ千九百十一年二月二十一日附書面ニ於テ日本土地法ニ關シ其寬大ナル解釋ニヨル保證ヲ與ヘタルハ該土地法中相互條件ノ規定アルノ故ヲ以テ合衆國ノ之ヲ請求シタルカ爲ニシテ右ノ保證ハ同子爵ノ書面ニ記載セルカ如ク「合衆國內ノ諸州ノ法律ニ依リ日本人ニ付與セル土地所有權ノ代償トシテ」與ヘラレタルモノナリ外國人土地所有ニ關スル日本法律ノ規定ハ必シモ寬大ナラストセス則チ如何ナル場合ニ於テモ又如何ナル方法ニ於テモ合衆國人民ニ對シ斷シテ不利ナル差別的規定ヲ存スルコトナク却テ土地所有ニ關スル總テノ問題竝ニ爾餘各種私權ノ享有ニ關シ日本ニ於テハ合衆國人民ニ與フルニ何等ノ區別モ條件モナキ完全ニシテ且無缺ナル最惠國待遇ヲ以テス而シテ帝國政府ハ右ノ待遇ニ對シ何等ノ變更ヲモ加フルノ意思ヲ有スルモノニアラス帝國政府ノ要求スル所ハ一ニ公平ニシテ均等ナル待遇ニ在リ豈其他ヲ望マンヤ

將又國務長官ハ合衆國ニ移住スル勞働者問題ニ就テ縷說スル所アリ施テ合衆國ニ於テ存在スルト稍ヽ類似セル事情ノ下ニ日本ノ執リタル措置ニ言及セラレタリト雖何カ故ニ斯ル解說ノ必要

解スル能ハサラシムルモノナリ何トナレハ該所說タル當ニ本件ノ問題タル加州法律ト直ニ衝突シ且條約ノ規定ニ由ラスシテ外國人ニ土地ノ所有ヲ許ス合衆國中他ノ諸州ノ法律ト相容レサルノミナラス又實ニ合衆國政府カ屢次事實トシテ承認シタル本件差別的待遇ヲ以テ何等不服ヲ唱フルノ理由ナシト宣言スルニ均シケレハナリ

如此事情ナルヲ以テ右ノ所說ニ對シテ帝國政府ハ唯其前來ノ主張卽チ加州立法ノ結果當ニ不動產所有ニ關シ合衆國ト條約上ノ取極ヲ有セサル國ニ屬スル外人ノミナラス合衆國ト全然通商條約ヲ有セサル國ニ屬スル外人ニ對シテモ亦自由ニ不動產ヲ所有スルノ權利ヲ附與セヲルル同一ノ地方ニ於テ日本國臣民ハ獨リ右ノ權利ヲ拒絕セラルルモノナリトノ論旨ヲ繰返ヘスヲ以テ足レリト信ス

次ニ本大臣ハ墨國事件ニ關シ合衆國ハ結局實際ニ於テ其主張ヲ放棄スルノ不得已ニ至レリトノ「ブライアン」氏ノ所見ハ之ヲ該事件ノ記錄ニ照シ帝國政府ノ同意スルヲ得サルモノナルコトヲ言明セント欲ス合衆國ト墨西哥國トノ間ニ交換セラレタル公文ヲ自然ノ順序ニ依リ查閱スルニ於テハ「ブライアン」氏ノ引用セル該事件當時ノ國務長官ノ所說ハ決シテ之ヲ以テ一旦ノ辯論ナリト解スヘキニアラス熟考ヲ經テ合衆國政府カ到著シタル結論ナリト看做ササルヘカラストノ信念ハ到底動カシ得ヘキニアラサルナリ

會ヲ得セシムルノ結果ヲ生シ來レリ唯例外ノ場合ニ於テ一國カ他國ニ對シ時ニ或種ノ特權ヲ付與スルコトアルハ事實ナリト雖本件ノ場合ノ如ク條約ニ依リ他ノ一國ト相互的最惠國關係ヲ有スル一國カ現ニ論議ノ主題タルカ如キ事柄ニ關シ右締約ノ當事者タル他ノ一國ニ對シ全然這般條約關係ヲ有セサル第三國ニ比スルモ尙且不利ナル差別待遇ヲ與フルヲ敢テスル如キハ蓋シ歷史ニ類例ナキ唯一ノ事相ナル可シト信セラル合衆國ノ極力抗議シタル夫ノ千八百六十三年ニ於ケル墨國ノ行爲ハ未タ以テ本件ト比ス可クモアラス何トナレハ右ノ場合ニ於ケル墨國ノ法律ハ專ラ地理上ノ考慮ニ基キ制定セラレタルモノナレハナリ

國務長官ハ貴官ノ所論乃チ本件加州法律ヲ以テ日本國民ニ對シ不利ナル差別待遇ヲ設クルモノナリトシ又土地所有ノ問題ニ關シテハ外國人ハ內國民又ハ最惠國民待遇ヲ與ヘラルルヲ以テ今日國際上ノ通則トナストノ主張ヲ否認シ其理由トシテ外國人土地所有問題ニ關シ合衆國ニ於テ行ハルル慣例ヲ援用シ且「合衆國ト這般ノ條約（卽チ明文又ハ最惠國條款ノ適用ニ依リ土地ヲ所有スルノ權利ヲ許與スル條約）ヲ有セサル國ノ人民ハ合衆國內ニ於テ土地ヲ所有スルノ權利ヲ享受スルヲ得ス」ト附言セリ

右國務長官ノ所稅ハ帝國政府ノ一驚ヲ喫シタル所ニシテ帝國政府ヲシテ到底何ノ意タルヤヲ了

存スル點ニ對シテハ何等根本的ニ答フル所ナク又問題ノ要點ニ關スル帝國政府ノ所信ヲ動スニ足ル可キ何等ノ言說ヲモ包含スルヲ見ス果シテ當方ノ確信スルカ如ク現行日米條約ニシテ一旦侵犯セラレタリトセンカ之ニ對スル救濟ノ途ハ唯タ一アルノミ而シテ斯ノ救濟ヲ與フルノ義務ハ一ニ懸テ合衆國政府ノ雙肩ニアルハ帝國政府ノ信セサラント欲スルモ能ハサル所ナリ唯本件法律ハ貴官ノ屢次提出セラレタル抗議ニ拘ラス今ヤ既ニ實施ヲ見ルニ至リタルヲ以テ帝國政府ハ本問題ニ關スル此上ノ詳論ハ暫ク之ヲ保留ス可シ然レトモ「プライアン」氏ノ書翰中ニハ一時タリトモ默過スヲ許ササル所說及論定アルヲ以テ本電訓ハ右ノ所論ニ答フルヲ以テ目的トナスモノナリ

第一ニ本大臣ノ言ハムト欲スル所ハ本件差別的待遇ヲ以テ合衆國ノ國家的政策ニ基キタルモノトナス如キハ帝國政府ノ夢想タモナササル所ナルコト是ナリ我政府ハ初ヨリ本件立法ヲ以テ地方的性質ノモノナリト解シ今尙爾ク解スルモノナリ唯如何ナル原因カ斯ル不當ノ法律ヲ制定セシメタルヤニ論ナク其結局人種的敵意ヲ明示スルモノタルハ蔽フ可ラス將又帝國政府ノ所見ニ據レハ右ノ法律ヲ以テ「經濟的狀態ヨリ發現セルモノ」ナリトノ斷定ニヨリ該法制定ノ正當ナルヲ辯護セントスルモ亦決シテ得可ラサルナリ

抑モ國際上不當ノ差別待遇ヲ防止スルハ近世通商條約ノ要務ナリ而シテ這般條約ニハ殆ト何レ

帝國政府第三回抗議

（大正二年八月二十三日發珍田大使電訓同月二十六日國務長官へ手交）

帝國政府ハ曩ニ制定セラレタル加州外國人土地所有法問題ニ關シ去ル七月十六日附ヲ以テ國務長官ノ復ヒ貴官ニ寄セラレタル二通ノ書面ヲ領シ篤ト之カ査閲ヲ了セリ

該法ハ曾ニ合衆國カ相互的條約關係ヲ有スル總テノ他外國臣民又ハ人民ニ對シテノミナラス無條約國ニ屬スル多數ノ外人ニ對シテモ亦依然トシテ自由ニ土地ヲ所有スルノ權利ヲ享有セシムルニ拘ラス獨リ帝國臣民ヨリノミ此權利ヲ褫奪スルモノニシテ日本ニ對シ極メテ顯著ニシテ且厭フヘキ差別ヲ設定シタルモノナリ加之帝國政府ノ所見ニ據レハ右ノ立法タル正義公道ニ反シ日米條約ノ明文及精神ニ悖リ且國際間ニ認メラレタル修好善隣ノ通義通則ト相容レサルノミナラス我帝國ニ對シ故意ニ他國ニ比シテ不利ナル區別的待遇ヲ與フルモノニシテ帝國國民ノ面目ト其本然ノ感情ニ對シ適當ノ敬意ヲ拂フト言フヲ得ス帝國政府抗議ノ骨子ハ實ニ斯點ニ在テ存スルナリ

「ブライアン」氏ノ書面ハ加州ノ行爲ヲ辯疏スルニ力メタル幾多ノ所論ヲ含ムト雖上記我故障ノ

斯ノ如キハ實際上ノ慣行ナルノミナラス政府ハ屢次條約ノ解釋ヲ相互ニ異ニスルコトアルヲ以テ如斯慣行アルハ私人タル訴訟提起者ニ取リテモ亦大ニ利益トスル所タラサルヘカラス一私人カ一國内ニ於テ其條約上ノ權利ヲ拒否セラレタリト主張スル場合司法上ノ保護カ其國政府ノ訴訟提起ニ俟ツモノトセハ該政府カ條約違反ニアラサルコトヲ主張スル場合ニ於テ右ノ一私人ハ全然有效ナル救濟ヲ得ル能ハサルコトアルヘシ且一私人タル訴訟提起者ハ其論辯及被害ノ陳述ヲ爲スニ當リ國際條約直接當事者ノ爲ス聲明及主張ニ必然附隨スル責任ニ依リテ拘束セラルルコトナシ故ニ若シ私人ニシテ國際條約ノ直接當事者タル政府ノ起訴ニ依賴スルニ於テハ其結果行動ヲ羈束セラレ救濟ヲ得ルノ機會ヲ減少セシムルノ不利益ヲ免カレサルヘシ

以上ノ理由ニ依リ私權殊ニ私有財產上ノ權利ニ係ル司法上ノ保護ハ右權利カ條約ニ依リ附與セラレタル場合ト雖總テ關係個人ノ訴訟ニ委セラルルヲ以テ通則トス然ルニ本件ノ場合ニ於テハ合衆國政府ハ普通ノ慣例ヲ超越シ司法手續ノ進行ヲ促進スル爲斡旋ノ勞ヲ執ルコトヲ提言スルモノナリ斯ノ如キハ合衆國政府カ常ニ親睦及恭敬ノ至親ナル關係ヲ維持センコトヲ冀テ止マサル友邦ノ自重心ニ對シ敬意ヲ表セントスルモノタルニ外ナラサルナリ

千九百十三年七月十六日

リテ有スル凡テノ適法ノ權利ニ對シ充分ナル保護ヲ享クヘシ而シテ合衆國政府ハ如此訴訟ヲシテ迅速ニシテ且實效アル決定ヲ得セシメンカ爲當該官吏ヲ用キテ何時ニテモ斡旋ノ勞ヲ取ランコトヲ欲ス如此ハ本件ニ對シテ執ルヘキ適當ニシテ且實行的ノ方法ナリト思考セラル蓋シ本件ニ就テハ種々ノ問題發生スヘク且其各個ノ問題ニ關シ如何ナル訴訟ノ形式ヲ以テ適當トナスヘキヤハ殆ト之ヲ豫見スルコトヲ得サレハナリ合衆國裁判所ハ世人ノ周知スル如ク權利ノ現實ナル侵害ニ伴フ現實ノ問題ノミヲ審理シ單ニ理論上若ハ豫想ノ侵害ニ就テハ之ヲ審理セサルモノトス

加州學童事件及「ホルコン、ランチ」事件ハ本問題ト其種類ヲ異ニス加州學童問題ニ於テハ單純ニシテ且財產ニ關係ナキ現實ノ條約上ノ問題發生シタルモノニシテ且該事件ハ直ニ裁決ヲ求メ得ルノ狀態ニアリシナリ「ホルコン、ランチ」事件ニ於テハ合衆國政府ハ合衆國カ直接ニ其當事者ノ一方タル國境境界線維持ノ目的ノ爲ニ一灌漑會社ニ對シ衡平法ニ據ル訴訟ヲ提起シタルモノナリ合衆國ハ其締結セル凡テノ條約ヲ維持スルニ留意スルハ勿論ナリト雖覺書ニ援用セラレタル多數ノ判決例ノ明示スルカ如ク私人ノ土地所有權ニ關スル問題ハ其權利カ條約ニ依リ保障セラレ居ル場合ト否トヲ問ハス合衆國政府ニ於テ何等之ニ關係スルコトナク利害關係者ノ訴訟ニ依リテ判決セラルルモノタルナリ

スルモノニ非サルナリ

覺書ハ合衆國内各州ニ於ケル外國人土地所有問題ハ條約締結權ノ範圍以外ニアリト唱フル者アルコトヲ引照セルモ右ニ對シテハ國務省ハ單ニ斯ノ如キ說ハ合衆國政府ヨリ出テタルモノニ非スト云ハンノミ覺書カ本問題カ從來合衆國政府ノ條約締結權ニ依リテ處理セラレタルコト竝ニ斯ノ如キ問題ニ關スル條約ノ條項ハ裁判所ノ支持スル所ナルコトヲ記述セルハ正當ナリトイフヘシ

覺書ハ伯剌西爾ニ於テ發生セル事件ニ關シ合衆國國務長官カ伯國州官憲ノ行爲ニ依リ合衆國人民ノ身命又ハ財產ニ及ホセル毀害ニ關シ責任ヲ負フモノハ獨リ「リオ、デ、ヂヤネロ」ニ於ケル帝國政府ナル旨ヲ聲明セシ千八百七十五年三月五日附ノ國務省訓令中ヨリ何等援用スル所アリタリ國務省ハ右ノ見解ノ正當ナルヤ否ヤヲ疑問トスルノ意ナシ然レトモ右ニ引用セラレタル訓令中ニハ伯剌西爾ニ於ケル各州知事ハ帝國政府ノ任命スル所ナルカ故ニ國際法蹂躙セラレ且裁判所ニ於テ公平ナル判決ヲ得ルコト能ハサル場合ニ於テハ帝國政府ハ常ニ州知事ノ行爲ニ對シ特ニ責任アリト看做サレ得ヘシトノ記述アルノ事實ニ關シ注意ヲ喚起センコトヲ欲ス

本月十六日附國務省ノ書翰ニ記述セルカ如ク

日本皇帝陛下ノ臣民ハ合衆國裁判所ニ於テ合衆國憲法ノ規定スル方法ニ據リ條約若ハ其他ニ據

シタル決議ニハ嘗テ記載セラレタル事ナク露國政府ニ與ヘタル條約廢棄通告ノ論據ハ覺書ニ於テ正確ニ記述セラレタルカ如ク該條約ハ「種々ノ點ニ於テ十分ニ兩國ノ政治及實益關係ノ須要ニ應スルニ足ラス」ト云フニアリタリ而シテ該條約ハ間モナク廢棄セラレタルモ右ハ單ニ條約ノ廢棄ニ過キスシテ在來ノ事態ハ依然繼續シ苦情ノ主題タリシ區別的待遇ハ尚何等ノ變更ヲ見サルナリ

覺書ハ加州新土地及家屋ノ所有權ニ關スル事項ニ付日本國臣民ニ對シ不利ナル區別的待遇ヲ與フルモノナリトナスモ國務省ハ本月十六日附書翰ニ於テ仔細ニ現行日米條約ノ諸條項ノ意義及效果ヲ說明シ本問題ニ關シ識別ヲ要スヘキ點ヲ十分指摘セルヲ以テ玆ニハ單ニ該前加州法ハ日本國臣民ニ對シ如此區別待遇ヲナスモノニ非ス市民トナリ得サル凡テノ外國人ニ對シ一樣ニ適用セラルルモノナル旨ヲ再言スルニ止メント欲ス

國務省ハ覺書ノ例ニ倣ヒ會社ト個人トノ比較ニ關スル多種ニシテ且時ニ錯雜セル問題ノ論議ニ入ルヲ避ケタリ此等ノ問題ハ裁判所ニ於テ審議セラルルヲ適當トスル特殊ノ性質ヲ有ス蓋シ會社ハ其株主ノ大部分カ他州若ハ外國ノ市民タル場合ニ於テモ尚該會社ノ設立セラレタル州ノ市民若ハ其州ニ住所ヲ有スルモノナリト解釋セラルルモ斯ノ如キ事項ハ要スルニ法律ニ依テ定メラルヘキ問題ニシテ會社ノ權利特權及免除ハ決シテ凡テノ事項ニ關シ自然人ト同一ノ範圍ヲ有

不利ナル地位ニ置カルルハ今回ヲ以テ嚆矢トナスト信スル旨ヲ述フルモ右ノ一節ハ互ニ關係ナキ二個ノ商題ヲ混同シタルモノノ如シ七月十六日附國務省書翰中ニ說述セルカ如ク締約國間ニ於テ或問題ニ關シ明文ヲ以テ相互的協定ヲ遂ケタル以上ハ其就レノ締約國ト雖右既定ノ取極ヲ目シ不公平不均等ナリト斷論スルノ理由ヲ有シ得ヘキ筈ナシ又右取極カ最惠國民待遇ノ程度ニ達セサルノ故ヲ以テ俄ニ之ニ對シテ異議ヲ唱ヘ得ヘキ筈ナシ又右取極カ最惠國民待遇ノ程度ニ達セサルノ故ヲ以テ俄ニ之ニ對シテ異議ヲ唱ヘ得ルノ理由モコレアルヘキニアラサルナリ區別的立法ニ關シ覺書ノ加ヘタル評論ニ對シテハ國務省ハ大體ニ於テ贊意ヲ表セント欲スルモノナリ去リ乍ラ時ニ多少ノ區別待遇ヲ設クルハ世間普ク行ハルルノ事例ニシテ此問題ヲ處理スルニ當リテハ更ニ重大ナル刺衝ノ原因ヲ避ケンカ爲寬裕ノ精神ヲ以テスルヲ必要トスル場合少シトセサルノ事實ヲ記憶セサルヘカラス蓋シ土地所有ニ關スル問題ノ如キ最モ這般穩和ノ見解ヲ以テ遇スルヲ必要トスルモノタラスンハアラサルナリ

覺書ハ露國政府カ米國人タル猶太人ノ入國ヲ一般ニ拒絕シタルノ故ヲ以テ當時存在セル米露間ノ通商條約ヲ廢棄セントスル千九百十一年十二月十三日ノ合衆國下院ニ於ケル決議ニ言及スル所アリシカ玆ニ注意スヘキハ該決議ハ未タ嘗テ露國政府ニ通告セラレタルコトナク隨テ何等國際的性質ヲ帶フルニ至ラサリシ事是ナリ尙覺書ニ引用セラレタル章句ハ合衆國議會トシテ採用

民ニ適用セラルルモノナルヲ以テ合衆國政府カ之ヲ以テ特ニ自國ノ人民ニ對シテノミ有害ナル排斥ヲナスモノナリト看做スハ何等正當ナル論據ヲ有セス又有シ得ヘカラサルモノナリ

上記墨國政府ノ同國法律ニ關スル辯明ハ之ニ先チ合衆國ノ提出シタル抗議ニ對スルモノナリ而シテ曩ニ掲ケタル合衆國國務省ノ訓令ハ上記辯明ニ對スル回答トシテ其後發送セラレタルモノニシテ該訓令ハ正ニ墨國政府ニ送致セラレタリ其後千八百七十九年八月二十日附ヲ以テ駐墨米國公使ハ下ノ如ク國務省ヘ稟報セリ

去月十七日本官ハ同日附書面ヲ以テ合衆國人民ニ對シ墨國接境州ニ於テ不動產及官有地取得禁止ノ件ニ關スル六月二十三日附貴信第六四六號ノ內容ヲ墨國外務省ニ申入レタリ然ルニ本日ニ至ル迄右書面ニ對シ單ニ受領セル旨ノ挨拶ニモ接セス右ニ對シテハ遂ニ何等ノ回答モ來ラサルコト殆ト疑ナシ又墨國政府ノ本問題ニ關スル政策ハ貴命ニヨリ提示シタル我抗議ノ結果トシテ變更ヲ加ヘラルヘシト期待スヘキ何等ノ理由ヲモ有セサルナリ

米國公使ノ前記豫言ハ的中シ千八百七十九年六月二十三日ノ辯駁書ハ遂ニ何等ノ回答ニモ接セス而シテ該法律ハ依然何等ノ變更ヲモ加ヘラレサリシナリ

覺書ハ通商及航海ニ關スル一切ノ事項ニ付最惠國條款ヲ有スル相互的通商條約ノ締結國タル一方カ當該條約ニ於テ交讓ノ主題トセル事項ニ關シ訂約國ノ他ノ一方ニヨリ無條約國ヨリモ更ニ

何等ノ規定ヲ設ケタルモノニアラス又該國民カ商業ノ目的ノ爲家屋及倉庫ヲ賃借スルヲ妨害シタルモノニ非ス又該國民カ各種生産物、製造品又ハ貨物ヲ賣買スルヲ禁シタルモノニ非ス又該國民ニ對シ最惠國人民ノ支拂フ以上ノ關稅、課金又ハ報酬ヲ要求シタルモノニ非ス約言セハ通商及航海ノ關スル限リ最惠國人民ニ許與シタル何物ヲモ合衆國人民ニ拒否セントシタルモノニ非レハナリ

而シテ又千八百三十一年合衆國ト締結シタル條約第三條ノ規定中特權、免除及權利ニ關シ最惠國人民ト同一ノ待遇ヲ保障シタルハ單ニ通商及航海ノ事項ニ關スルノミナリ假ニ一步ヲ讓リ他ノ事項ニ之ヲ擴充シ得ヘシトナスモ右同一ノ待遇ハ常ニ同一ノ情態ノ下ニ於テノミ之ヲ與ヘラルルモノト解釋セラルヘキモノニシテ從テ邊疆諸州ニ於ケル土地ノ取得ニ關シ墨國ト境ヲ接スル合衆國ヲ以テ假令ハ歐洲又ハ南米諸國ト同一情態ノ下ニアリトナスハ首肯シ難キ所ナリトス

之ト同時ニ本官ハ千八百六十三年七月二十日ノ該法律ニ規定セル除外例ニ就キ閣下ノ注意ヲ喚起セント欲ス該除外例ハ本書ノ起草ヲ誘起シタルモノニシテ最モ主要ナル性質ヲ有スルモ右ハ必シモ合衆國人民ニノミ關スルモノニ非スシテ均シク墨國ト接壤スル「グアテマラ」共和國ノ人民ヲモ意味スルモノナリ如此該法律ニ規定セラレタル禁令ハ墨國ニ接境スル凡テノ國

墨國政府ノ態度ハ其外務卿ヨリ在墨米國公使ニ宛テタル千八百七十九年五月二十六日附ノ書面中ニ記述セラレタリ即チ左ノ如シ

本官ハ貴翰ノ趣ヲ共和國大統領ニ申報シ其命ヲ奉シ玆ニ次ノ如ク回答スルノ光榮ヲ有ス國家カ外國人ニ對シ其領土内ニ於ケル不動産取得ノ特權ヲ附與又ハ拒否シ竝ニ假令一旦附與シタル時ト雖其ノ權利ノ行使ニ關シ制限ヲ設クルノ權力ヲ有スルハ論爭ノ餘地ナク一般ニ認識セラルル所ナリ墨國ハ上記ノ國權ヲ運用シ本件ニ關シ區々ノ法律ヲ發布セリ就中千八百四十二年三月十一日ノ法律ハ墨國ニ定著居住セル外國人ニ對シ墨國ニ於テ市内又ハ市外ノ財産ヲ取得又ハ所有スルヲ許容セルト共ニ外國ト接境セル諸州ニ於テハ外國人ハ政府ヨリ特別ノ許可ヲ受クルニ非レハ不動産ヲ取得スル事ヲ得サルノ例外ヲ設ケ又千八百六十三年七月二十日ノ法律ハ接境ノ外國ニ出生又ハ歸化セル人民ニ對シ是等諸國ニ接壤セル墨國内諸州ノ官有地ヲ取得スル事ヲ禁止セリ

墨國ハ如此嚴密ナル法律ヲ發布シタリト雖之カ爲千八百三十一年ノ條約第三條ノ規定ニ違背シタルコトナク又該條約ノ精神ニ悖戻シタルコトモナキナリ何トナレハ該法律ハ北米合衆國人民カ其船舶又ハ貨物ヲ以テ他ノ外國人ニ許サレタル墨國内ノ市場、港灣、河川ニ來往スル事ニ關シ同國人民ニ對シ保障セラレタル自由、特權、保護ニ違反スルモノト解釋セラルヘキ

ニ於テ不動産ヲ所有スル權利ヲ附與シタル明文ナク又該事項ニ關シ墨國人民ト我人民トノ間ニ同等ノ權利ヲ認ムルノ規定ナシト然レトモ單ニ條約第二條及第三條ノ字句ヲ以テセハ墨國ニ於ケル合衆國人民ト他外國人民トニ同等ノ待遇ヲ與フヘキハ通商及航海ノ事項ニノミ局限セラレタルカ如シト雖不動産ノ取得及所有ノ特權ニ關シテモ亦如上同等ノ待遇ヲ與フヘキモノトノ解釋ハ正當ノ理由アルモノト言ハサルヘカラス何トナレハ若シ始メヨリ前記ノ如キ狹義ノ解釋ニシテ豫見セラレンカ我政府ハ必ス明文ヲ以テ之ヲ阻止シタルヘケレハナリ當國ノ法律ニ於テハ墨國人民ニ對シ決シテ如此區別的規定ナキヲ信ス千八百六十三年ノ墨國法律ノ效果中同國政府ノ注意ヲ逸シタルカ如キモノ少クトモ一アリ卽チ「グアダルーブ、ヒダルゴ」條約及「ガドセン」條約ノ兩者ハ共ニ墨國ヨリ合衆國ニ割讓セル土地ニ於ケル墨國人民ニシテ將來合衆國人民ニ轉スルノ運命ヲ有スルモノニ對シ右割讓地城內ニ於ケル財產上ノ完全ナル權利ヲ保障セリ而シテ是等人民ノ多數ハ接境墨國諸州ニ於テ不動產ノ所有者タリシヲ以テ元墨國人タリシモノカ「テキサス」其他ノ場所ニ於テ享有セル財產ハ前記條約ニヨリ保障セラルルニ拘ラス右墨國法律ノ效果ハ前顯接境墨國諸州ニ於ケル財產ヲ褫奪セントスルノ奇觀ヲ呈スルモノナリ是ヲ以テ我政府ハ墨國政府カ此問題ニ關スル政策ヲ變更シ前段指摘セルカ如キ重要ナル故障ヲ除去センコトヲ希望セサルヲ得サルナリ

記ノ條項ヲ有セル千八百六十三年七月二十日ノ法律ニ關聯セルモノナリ

共和國（譯註、墨西哥）ニ在住スル者ハ何人タルヲ問ハス二千五百「ヘクタール」ヲ超エサル範圍ニ於テ官有地ヲ取得スル事ヲ得但シ接壤共和國ニ出生又ハ歸化セル人民ハ如何ナル名義ニ依ルニ拘ラス右接壤國ニ隣接スル墨國內ノ諸州ニ於テ官有地ヲ取得スルヲ得ス

其當時國務省カ恰モ今回日本政府ノ提起セラレタルカ如キ辯論ノ全幅ヲ提ケテ之ニ臨ミタルハ千八百七十九年六月二十三日附國務省訓令ノ文面ニ徵シ明ナリ卽チ左ノ如シ

上記ノ合衆國人民ト他外國人民間ニ此種ノ區別ヲナスハ啻ニ嫌忌スヘク且不必要ナルノミナラス條約ニ牴觸シ且兩國ノ明白ナル利害ニ鑑ミ常ニ兩國間ニ維持セラルルヲ要スヘキ友交的關係ト全然兩立セサルモノナリ

千八百六十三年ノ墨國法律ハ接境諸州ノ我人民ニ取リ特ニ嫌忌スヘキモノニ屬ス該法律ハ右諸州ノ人民ヲ指定シテ之ヲ區別シ是等人民ヲ以テ不動產所有ノ特權ヲ與フルニ足ラサルモノト極印スルモノニシテ我政府ハ斷シテ如此極印ヲ容認スルモノニアラス何トナレハ當共和國ノ各州ノ人民ハ對外關係ニ於テハ一ニ合衆國人民トシテ認識セラルヘキモノニシテ何レノ外國ニ對シテモ我政府ハ決シテ州ノ如何ニヨリ當國人民ヲ區別スルノ權利ヲ認ムルモノニアラサレハナリ或ハ言ハン千八百三十一年ノ條約ニハ締約國ノ人民ニ對シ互ニ他ノ一方ノ領土內

稀有ニ屬スルノ事實ヲ指摘スルニ止メントス合衆國ノ條約中最惠國民待遇ノ條項ハ殆ト總テノ場合ニ於テ通商及航海ノ事項ニ關スル唯僅少ノ場合ニ外國人ニ土地ノ所有ヲ許與シタル事ナキニアラサルモ其二三ノ例外ヲ除クノ外ハ特殊ナル條約規定ニ依リテノミ外國人ニ土地所有ヲ許與シ來リタルカ故ニ合衆國ト如此條約關係ヲ有セサルノ國ノ人民カ土地所有權ヲ享有スル能ハサルハ當然ナリトス

此點ニ關シ覺書ハ「ムーア」氏國際法規彙纂第六卷第七〇二頁中「墨國ニ於ケル不動產所有ノ能力ニ關シ合衆國人民及他ノ外國人ニ不利ナル差別的待遇ヲ與フル墨國ノ法律ハ千八百三十一年ノ條約ニ牴觸スルモノナリ」トノ概論ヲ援用セリ

國務省ハ他ノ總テノ論點ニ對スル場合ト等シク右概論ノ關スル問題ニ就キ充分率直ニ解說スル所アラント欲スルモノナリ覺書カ千八百三十一年ノ條約ハ土地所有ノ問題ニ關シ何等明確ノ規定ヲ存セス又其規定スル最惠國民待遇ノ條款ハ單ニ通商航海及他ノ不動產所有ノ問題ニ關係ナキ或種ノ事項ニ關スルモノナル旨ヲ記述セルハ正ニ事實ヲ誤ラサルモノナリ然レトモ合衆國政府ハ當時之ニ對シ恰モ帝國政府ノ今日強硬ニ主張セラルルト同一ノ論辯ヲ試ミタルモ結局其主張ヲ事實上拋棄スルノ已ムヲ得サルニ至レルナリ其事歷下記ノ如シ

當時合衆國ノ提出セル抗議ハ墨國ニ於テ外國人ノ土地所有權ヲ制限セル或種ノ法律竝ニ特ニ左

レタルコトナシ如此法律ノ變更ハ由來合衆國及其他ノ諸國ニ於テ決シテ稀有ノ事ニ非ス斯ル變更ノ既得權ヲ侵害スルモノニアラストハ一般ニ信セラルル所ナリ既ニ凡テノ外國人ニ對シ讓與移轉ノ權利ヲ拒否スルモ尚既得權ノ侵害ニ非ストセハ或種ノ外國人ニ對シ同樣ノ權利ヲ禁止スルモ亦既得權ノ侵害ナリト云フヲ得サルヤ明ナリ此點ニ關シテハ特ニ合衆國ト諸外國間ノ幾多ノ條約ニ關シ注意ヲ喚起セサルヘカラス卽チ是等諸條約ニ依レハ締約國ノ一方ノ領土ニ在ル不動產カ其所有者ノ死亡ニヨリ他ノ締約國ノ人民ニ歸屬セントスル場合アリトシ而モ該不動產所在地ノ法律ニヨリ其人民ハ外國人タルノ故ヲ以テ之ヲ取得スルノ能力ヲ有セサル場合ニ於テハ該人民ハ條約ノ取極ニヨリテ差違アルヘキ一定ノ期間內ニ於テ其土地ヲ賣却シ其代金ヲ取得スヘキ事ヲ規定セラル是等ノ規定ニ徵スルモ所有權ハ其處分又ハ相續ニ關シ必シモ無限且無變ノ權利ヲ伴フモノニ非ルノ事實ヲ確認スルニ難カラサルナリ

覺書ハ現行條約ノ明文ヨリモ寧ロ其「精神」ニ依賴シ加州新土地法ノ規定カ國際關係ニ於テ外國人ニ與フルニ內國人又ハ最惠國人民ト同一待遇ヲ以テスルヲ通則トスル事項ニ關シ日本國臣民ニ對シ不利ナル區別待遇ヲナスモノナリト主張スルモ國務省ハ遺憾ナカラ右ノ斷定ヲ以テ正當ノ理由アルモノト看做スヲ得ス條約上ノ規定ニ對シ細密ノ調查ヲ試ムルハ姑ク之ヲ擱キ玆ニハ只國務省ハ外國人土地所有ノ問題カ最惠國民待遇ノ事項トシテ取扱ハレタルハ合衆國ノ慣行上

裁判所ニ於テ充分ナル保護ヲ受クヘキハ國務省ノ信シテ疑ハサル所ナル旨ヲ今玆ニ再言スルモノナリ

千九百十一年ノ現行條約ニヨリ保障セラルル權利ニ關シ覺書ニ記述セラレタル點ニ付テハ國務省ハ加州新土地法第二條ニ於テ「合衆國國法ニ依リ歸化シ得サル外國人ハ合衆國ト當該外國人ノ本國間ニ締結セラレタル約條ノ指示スル方法、範圍及目的ニ依リ加州ニ於テ不動產若ハ不動產上ノ各種權利ヲ取得、保有、使用及讓渡スルコトヲ得」トノ規定ヲ存スルノ事實ニ重ネテ言及セサルヲ得ス該條ハ明確ナル措辭ニヨリ機利ノ承認ハ都テ現行條約ノ保障ニ基クコトヲ要求スルカ故ニ苟モ條約ニ依リ保障セラレタル權利ニシテ充分ナル擁護ヲ受ケサルヘシトノ推定ハ斷シテ來リ得ヘカラスト信ス

然レトモ覺書ニ於テハ財產所有權ハ必スヤ其財產ヲ賣却、贈與、遺贈、相續等如何ナル方法ニ依リテモ處分スルノ既得權ヲ隨伴スルモノニシテ此既得權ハ將來ニ亙リ何等ノ制限拘束ヲ受クヘキモノニ非ストノ理論ヲ擴充セラルル事其度ヲ逸スルモノアルカ如シ如斯理論ニ從ハンカ一國カ財產ノ移轉ニ關シ其法律ヲ變更スルハ不可能事タルニ至ルヘシ國務省ノ知ル限リニ於テハ所有權カ其內國人又ハ外國人ノ孰レニ付與セラレタルニ論ナク法律ノ變更ニヨリ一部又ハ全部ノ外國人ニ土地ノ購買ヲ禁スルニ至リタル爲未タ嘗テ右ノ所有權ニ侵害ヲ及ホシタリト看做サ

合衆國政府第二回回答追加覺書

珍田子爵ノ覺書ハ明ニ六月三十日帝國外務大臣ヨリ接受セラレタル電報ニ基キ提示セラレタルモノナリ該電報ハ加州ニ於テ日本人ノ現ニ所有スル土地ノ大部分ハ現行條約ノ實施期日タル千九百十一年七月十七日以前ニ取得セラレタルモノナル旨ヲ說述シ進テ「シラック」對「シラック」事件及其他ノ事件ニ關スル合衆國高等法院ノ判決例ヲ引證シ是等ノ判決例ハ日米舊條約有效期間中合衆國內ニ於テ日本國臣民ノ取得シタル財產上ノ權利ヲ確保スルモノタル旨ヲ主張セルモノナリ

國務省ハ右覺書ノ例ニ倣ヒ其引證ニ係ル各種判決例ニ關シ細密ナル解說ヲ試ムルコトハ姑ク之ヲ避ケ玆ニハ唯「シラック」對「シラック」事件ノ判決例ヨリ援用セラレタル「一旦取得セラレタル權利ハ之カ存續ノ爲其權利ヲ付與シタル權原ノ繼續的存在ヲ必要トセス」トノ原則及「若シ條約又ハ法令ノ效果トシテ一旦權利ノ取得ヲナサシメタルトキハ該條約又ハ法令ノ廢棄ニヨリ該權利ノ消滅ヲ來ス事ナシ」トノ原則ノ宣明ヲ容認スト云ハント欲ス此點ニ關シテハ國務省ハ珍田子爵ノ六月四日附書翰ニ對スル回答ニ於テ說述スル處アリシモ尙財產上ノ凡テノ既得權カ我

シトノ掛念ヲ表白セラレタリト雖一切ノ既得財産權ニ對シ裁判所カ十分ノ保護ヲ與フルハ當省ノ疑ヲ容レサル所ニ有之加之本官ハ若シ帝國政府ニ於テ其臣民現有ノ財産權ヲ件ノ法律ノ爲ニ毀損セラレタリト主張セラルル事件ノ發生シタル曉ニハ當國政府ハ右日本國臣民ニ對シ其被リタル損害賠償ノ責ニ任ス可ク或ハ又何等損害ノ申出ヲ避ケンカ爲右法律制定以前ニ於ケル十分ノ市價ヲ以テ日本國臣民ノ土地ヲ買受クルコトスラモ辭セサルヘキコトヲ附言セント欲スルモノニ有之候

終ニ臨テ本官ハ閣下ニ對シ

日本皇帝陛下ノ臣民ハ其一切ノ合法的權利ニ對シ本官前回ノ公文ニ陳ヘタルカ如ク合衆國憲法ノ規定スル所ニ依リ合衆國ノ裁判所ニ於テ十分ノ保護ヲ受クヘキヲ保證スルノ光榮ヲ有ス而シテ本官ハ更ニ進ンテ當國政府ハ斯ル訴訟ノ迅速且有效ナル決定ヲ期スル爲其相當官憲ヲ通シ斷ヘス斡旋ノ勞ヲ辭セサル可キヲ閣下ニ保證セントスルモノニ有之如斯ニシテ兩國政府ハ由來彼我ノ政府及人民間ニ於ケル修好關係ノ特色タル傳來的友誼及相互的尊敬ヲ永遠ニ持續スルコトニ協力スヘキ儀ト相信シ候

右回答旁本官ハ茲ニ重テ閣下ニ向テ最高ノ敬意ヲ表シ候　敬具

千九百十三年七月十六日

衆國國籍ヲ取得スル能ハストセル合衆國國法ノ規定ハ日本政府及人民ノ快トセサル所ナリ是レ右規定ノ根底ニ蟠マル人種上ノ差別カ彼等ノ正當ナル國民的自負心ヲ損傷スルモノアレハナリ」ト言明セラレタリ但シ閣下カ歸化ノ問題タル國内政治ノ問題ニシテ國際交渉ノ問題ニアラサル」ノ事實ヲ認メラレタルハ實ニ當然ノ儀ト思料致候

本官ハ閣下カ日本國臣民ハ「國民トシテ」合衆國國籍ヲ取得スルノ權利ヲ拒絶セラルルモノナリト言ハルルモ幷ハ閣下カ合衆國ノ歸化法カ字句又ハ結果ニ於テ特ニ國民的ナリト思料セラル可キ何等ノ區別ヲ爲スモノナリトノ感想ヲ表白セントセラルルカ爲ニハアラサル可キヲ思フテ自ラ喜フモノニ有之將又右法律ノ規定ヲ歷史的ニ研究セハ日本ノ政府及人民ハ該法律カ日本人ニ對シ差別ヲ設ケントシタルモノナリト感ス可キ何等ノ理由ヲ有セサルコトヲ明ニスルヲ得可ク而シテ歸化ノ問題タル「國内政治ノ問題ニシテ國際交渉ノ問題ニアラサル」事實ハ既ニ貴翰ニ於テ認メラレタル所ナルカ故ニ本官ハ閣下ハ此問題ニ關シ敢テ論究スルノ訓令ヲ有セラレサルモノト推定シ之ニ關シ更ニ多クノ論議ヲ試ムルコトハ暫ク差控フルコトト可致候

更ニ又閣下ノ公文ニハ加州法律ノ趣旨カ條約上ニ定メラレタル方法、範圍及目的ニ隨ヒ不動產ヲ所有スルノ權利ヲ外國人ニ保障スルニ有ルニ拘ラス右法律ノ規定ハ當ニ現行條約ノ規定ニ依リ與ヘラレタル財產權ノミナラス從來ノ法律ニ遵ヒ取得シタル財產權マテモ傷害スルニ至ル可

可シ但シ將來ニ亙リ各別個ノ州ニ關シ相互的條件ヲ支持スルノ權利ヲ保留ス

前記ノ一節ヲ引用スルニ當リ本官カ末段ノ數行ニ圈點ヲ付シタルハ締約當事者カ日本帝國大使ノ聲明ニ隨ヒ日本人ニ土地所有ヲ許ササル諸州（譯註、合衆國內ノ）ヨリ來ル合衆國ノ人民ハ日本ニ於テ土地ヲ所有スルノ權利ヲ拒否セラル可シトノ意味ニ於テ土地所有ニ關スル相互條件ヲ支持スルノ權利ヲ保留シタルモノナルコトヲ明白ニ了解シタリトノ事實ニ對シ特別ノ注意ヲ喚起センカ爲ニ外ナラス候

右ニ指摘シタル所ニ據リ第一、合衆國ニ歸化スルコトヲ得サル外國人ニ對シ三箇年ヲ超エサル期限ヲ以テ農業上ノ目的ノ爲ニ州內ノ土地ヲ賃借スルノ權利ヲ付與スル加州ノ法律ハ毫モ農業地賃借ノ權利ヲ與ヘサル日米條約ノ範圍以外ノ特權ヲ與フルモノト言フヲ得可ク第二、合衆國內ノ州法カ歸化能力ナキ外國人ニ對シ當該州內ニ於テ土地ノ所有ヲ許ササル場合ニハ帝國政府ハ右各箇ノ州民ニ對シ嚴格ナル相互主義ヲ適要スルノ權利ヲ保留スルモノナリト稱スルヲ得可シ一言以テ之ヲ蔽ヘハ特權付與ノ範圍ト特權拒否ニ對スル報復ノ範圍トハ締約國雙方ノ完全ニ了解シ承諾シタル所ニ有之候

將又閣下ハ土地所有問題ト關聯シテ合衆國ニ於ケル歸化ノ問題ニ言及セラレ日本國臣民ハ國民トシテ合衆國國籍ヲ取得スルノ權利ヲ拒絕セラレタルモノナリ」ト述ヘラレ且日本國臣民ハ合

何等言及スル所ナシ其理由ハ帝國政府ニ於テ外國人ノ土地所有問題ニ關シテハ條約上ノ規定ヲ避ケ專ラ內國法ニ依リテ之ヲ處理セント欲シタルニ由ルモノト了解致サレ候

之ヲ調印ヲ經タル條約ニ就テ看ルニ不動產ニ關スル締約國雙方ノ人民又ハ臣民ノ權利ニ就テハ右ノ人民又ハ臣民ハ「家屋、製造所、倉庫及店舖ヲ所有又ハ賃借シテ之ヲ使用シ」及「住居及商業ノ目的ノ爲ニ土地ヲ賃借スル」ノ自由ヲ有スルノ特殊ノ規定アリ(第一條)卽チ土地ヲ賃借スルコトヲ得ル相互的權利ハ「住居及商業ノ目的」ニ限局セラレ農業地ノ賃借ヲ包含スル可キ」副業及「他ノ適法ノ目的」ナル語ハ省略セラレタル儀ト承知被致候

抑モ土地所有問題ハ日本政府ノ希望ニ隨ヒ公文ノ交換ニ依リ之ヲ取極メタルモノニシテ右ノ取極ニ據レハ此問題ハ締約國各自ノ當該地法ニ依リテ規定セラル可ク而シテ此點ニ關シ合衆國ニ於テ適用セラル可キ法律ハ各州ノ州法ニ有之右ハ千九百十一年二月二十一日附「ノックス」氏宛內田男爵ノ書翰ニ明示セル所ニシテ其中同男爵カ本問題ニ關スル「ノックス」氏ノ質問ニ答ヘタル一節ニハ實ニ左ノ言アリ

合衆國ノ諸州カ其法律ニ依リ日本人ニ土地所有權ヲ付與セルニ對シ(余(譯註、國務長官)ハ日本人ニ土地所有權ヲ付與スルモノ目下約三十州アルコトヲ玆ニ附記ス可シ)帝國政府ハ法律ノ寬大ナル解釋ヲ採リ合衆國內ノ總テノ州ヨリ來ル合衆國人民ニ對シ土地ノ所有權ヲ付與ス

次ニ前段本官ノ言及シタル閣下公文中ノ或陳述ニ顧ミ本官ハ帝國政府ニ於テハ兩國間條約ノ規定ニ十分ノ注意ヲ拂ハレサリシニアラスヤトノ感想ヲ起ササルヲ得サル次第ニ有之候御來示ノ一節ニ曰ク「之ヲ兩國間條約ノ規定ニ照シ」帝國政府ハ加州法律ヲ以テ「右條約ノ明文及精神ニ反シ」且「一般ニ承認セラレタル公正ニシテ均等ナル待遇ノ原則ニ悖ルモノナリ」ト確信スルモノナリト然ルニ右ノ語句中ニハ明ニ區別アリ且恐ラク矛盾セル二個ノ問題カ同時ニ提起セラレタルヲ見受ケラレ候蓋シ條約上ノ權利ノ問題ト公平ニシテ均等ナル待遇ノ問題トカ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的待遇方法ヲ以テ公正均等ナラスト言フノ權利ハナカルヘシ貴翰ニ援用セラレタル條約ハ千九百十一年二月二十一日華盛頓ニ於テ合衆國ヲ代表セル國務長官「ノツクス」氏ト帝國政府ヲ代表セル內田男爵トノ間ニ調印セラレタルモノナリ此條約ハ帝國政府提出ノ草案ニ基キタルモノニシテ右草案ノ第一條ニハ左ノ一節アリ

三　締約國ノ臣民又ハ人民ハ必要ナル家屋、製造所、倉庫、店舖及構造物ヲ所有又ハ賃借シテ之ヲ使用シ及住居、商業、產業、製造業及他ノ適法ノ目的ノ爲ニ土地ヲ賃借スルコトヲ得

右ノ一節ハ不動產ノ問題ニ關シ規定スルヲ目的トセルモノナルニ拘ラス土地ノ所有ニ關シテハ

ヲ受クルニ非サレハ從前ノ居留地及雜居地以外ニ於テ居住シ又ハ其業務ヲ行フコトヲ得ス

勞働者ノ種類及本令施行ニ關スル細則ハ內務大臣之ヲ定ム

當省（譯註、國務省）ノ聞ク所ニ據レハ右勅令ハ日淸戰役後日本ニ於テ賃銀ノ昂騰シ初メタルヨリ之ニ誘ハレテ日本ニ來ランコトヲ欲スルニ至リタル支那勞働者ノ入國ヲ防止スル爲ニ發布セラレタルモノナリトノコトニ有之蓋シ日本ニ於テ支那勞働者ノ來住ニ故障ヲ唱フルハ其內地人ヨリモ低廉ナル賃銀ニ甘ンシテ勞働スルカ爲ニシテ敍上ノ賃銀昂騰ノ結果トシテ合衆國ノ或地方ニ於ケルト同樣ノ狀態カ日本ニ於テ發生シタルニ由ルモノニ有之當省ノ知ル所ニ據レハ千九百〇七年ノ夏二團ノ支那勞働者ハ前記勅令ノ適用ニ依リ日本ヨリ排斥セラレタルカ其中一團ハ苦力ヨリ成リ他ハ熟練職工ヨリ成レルモノナリシト承知セリ而シテ右勅令カ支那人以外ノ勞働者ニ對シテ曾テ適用セラレ又ハ現ニ適用セラルルモノナルヤ否ヤハ當省ノ知ラサル所ナリト雖當省ハ帝國政府カ右勅令ノ實施ニ於テ人種的差別ヲ設クルノ意思ヲ藏スルモノナリトハ解セス却テ帝國政府カ處理セントシタル問題ハ其本質ニ於テ經濟的ニシテ唯附帶的ニ人種的ナリシノミナリト想定セントスルモノニ有之尙右ノ勅令ハ本來支那勞働者排斥ニ出テタルハ疑ナシト雖他人種ニ屬スル勞働者ニ適用セラルル場合モ亦同樣ナリト認ムル次第ニ有之候

如此假想カ事實ノ立證ヲ有セサルハ申ス迄モナキ儀ニ有之候本官ハ人類間ニ於ケル一切ノ相違例ヘハ容貌、作法、言語、意見、國籍又ハ人種ノ相違カ時ニ或種類ノ敵意ヲ挑發スルコトアルヲ認ムルニ躊躇セサルモノニ有之候モ如何ナル相違ト雖假令ハ生存競爭ノ利害ノ如キ鬪爭的性質ヲ有スル利害問題ト伴フニアラサレハ決シテ重大ナル結果ヲ生スルモノニハアラサルカ如ク相見エ候尤モ經濟的鬪爭ニ於テモ人種ノ異同ニ依リ黨派ノ分ルルハ勿論有リ得ヘキコトナリト雖如此ハ決シテ人種的敵意ノ爲ニ然ルニアラスシテ異人種ノ慣行及習俗カ競爭力ヲ發達セシメ或ハ減少セシムル事情アルニ因ルモノニ有之候換言スレハ鬪爭ノ本質ハ經濟的ニシテ其人種的色彩ヲ帶フルニ單ニ經濟的競爭ノ外形又ハ偶然的現象タルニ過キサル次第ニ有之候

此事實ハ各國ノ共ニ認ムル所ニシテ是レ何レノ國ト雖其國內ノ秩序ヲ保全シ兼テ國際關係ノ調和ヲ擾スノ虞アル論爭ヲ避ケンカ爲何人カ其領土內ニ定住シ以テ其政治的團結ノ一部ヲ構成スルコトヲ得ルヤ否ヤヲ決スルノ自由ヲ享有スル所以ニ有之現ニ日本帝國政府ハ自ラ此原則ヲ承認シ採用セルノ實例ヲ示シ居リ候即チ千八百九十九年勅令第三百五十二號（右勅令ハ今尙效力ヲ有シ居ル筈ナリ）ハ規定シテ曰ク

第一條　外國人ハ條約若ハ慣行ニ依リ居住ノ自由ヲ有セサル場合ト雖從前ノ居留地及雜居地以外ニ於テ居住、移轉、營業其他ノ行爲ヲ爲スコトヲ得但シ勞働者ハ特ニ行政官廳ノ許可

合衆國政府第二回回答

以書翰啓上致候陳者曩ニ加州ノ制定ニ係ル同州ノ外國人土地所有法ノ件ニ關シ六月四日附貴翰ヲ以テ御來示ノ趣篤ト閣悉致候

本官ハ去ル五月十九日附書翰ヲ以テ日本政府ノ抗議ニ對シ及回答置キタル次第有之候處右回答ヲ査閲セラレタル上ニ於テ尚日本政府ハ件ノ法律ヲ以テ曾ニ不公平ニシテ故意ニ人種的差別ヲ設クルモノナルノミナラス兩國間條約ノ明文及精神ニ反シ且友好國間ニ於ケル親善關係ノ根本義タル公正ニシテ均等ナル相互待遇ノ原則ニ悖ルモノナリトノ見解ヲ持續セラルルモノナルコトヲ知ルハ本官ノ遺憾トスル所ニ有之候

加州ノ法律カ外國人ニ差別的待遇ヲ與ヘントスル何等國民的政策ノ存在ヲ示スモノニアラサルハ固ヨリ毫モ政治上又ハ人種上ノ敵意ヲ表現スルモノト看做ス可キモノニアラスシテ寧ロ地方的經濟狀態ヨリ發生シタルモノナリト解ス可キモノタルハ本官ノ去ル五月十九日附書翰ニ於テ既ニ指摘シタル所ニ有之候然ルニ本官ハ閣下ノ示サレタル提言ハ該法律ハ人種的差別ヲ設クルモノナリトノ假想ニヨリ支配セラレ居ルモノナリトノ感想ヲ禁スル能ハサルモノニ有之而シテ

カ處辨ハ目下ノ處唯外交手段ニ依ルノ一アルノミ但シ同樣ノ場合ニ於テ合衆國政府ハ當時實施中ノ條約ヲ支持スル爲ニ自ラ訴訟ヲ提起シタルコトアリ卽チ桑港學童事件及「ホルコン、ランチ」事件ノ如キ是ナリ兩事件共ニ訴訟ハ合衆國ニ依リ合衆國巡廻裁判所ニ提起セラレタルモノナリ

大正二年七月三日

全然州ニ留保セラレタリトセハ米國カ右ノ約定ニ同意スル筈ナカリシコトヲ指摘スルヲ以テ足レリトス可シ

第五　帝國政府ハ又玆ニ本件ト類似事件ノ處辨問題ニ關シ米國國務長官カ千八百七十五年三月五日附ヲ以テ伯剌西爾國駐在米國公使ニ宛テタル公文ニ言及セント欲ス右公文ニ用ヰラレタル文語ハ珍田子爵カ去ル六月四日附ノ公文ニ於テ陳述シタル論旨ト恰モ符節ヲ合スルカ如キモノアルヲ以テ左ニ其一節ヲ引用スルノ自由ヲ與ヘラレンコトヲ希望ス

國務長官「フイッシュ」氏曰ク「要償者ノ請求ハ救濟ノ爲之ヲ當該州官憲ニ移牒ス可シトスル伯國ノ提議ニハ同意シ難シ如斯地方官憲ハ米國政府ノ公然認知スル限ニアラス州官憲ノ行爲ニ依リ米國人ノ身命又ハ財產ニ及ホセル毀害ニ關シ米國政府ニ對シテ責任ヲ負フモノハ「リオデ、ヂヤネロ」ニ於ケル伯國政府ナリ同一ノ原則ハ合衆國ニ於テ州官憲ノ爲ニ損害ヲ被ムリタル伯國人民ノ場合ニ於テモ適用セラル可シ」ト（「ムーア」氏國際法規彙報編纂第六卷第八一六頁）

加州制定ノ法律カ日本國臣民ノ個人トシテノ權利ヲ傷害スル場合ニ於テハ被害者ハ之カ救濟ヲ裁判所ニ求ム可キハ勿論ナルモ今日米間ニ繫爭中ノ問題ハ條約ノ解釋ニ關スルモノニシテ斯ノ問題ノ最終決定ヲ得ンカ爲ニハ兩國共ニ同等ノ發言權ト利害トヲ有スルモノナリ隨テ之

州ノミナルカ如シ右能力ノ有無ナル語ハ其加州法文ニ引用セラレタル前後ノ關係ヨリ之ヲ看ルニ外國人カ結局米國人民トナリ又ハナラサルコトノ問題トハ何等ノ關係ヲ有セス唯土地及家屋ノ所有ニ關シ白人種又ハ亞弗利加人種ニ屬スル外國人ニ比シ不利ナル差別待遇ヲ日本國臣民ニ與ヘントスル加州ノ決意ヲ表明スル爲ニ便用セラレタルモノナルニ過キス

故ニ外國人土地所有ノ問題ニ關シテハ加州ノ法律ト他ノ諸州ノ法律トノ間ニハ左ノ明白ニシテ重要ナル區別アルヲ見ルヘシ卽チ他州ノ法律ニ依レハ不動產ヲ所有スルノ權利ヲ行使シ得ルニ先チ結局米國人民トナルコトヲ誓盟スル實際ノ手續ヲ履マサル可ラサルニ反シ加州法律ニ於テハ單ニ斯ル手續ヲナシ得ルノ能力ヲ以テ足レリトセリ（譯註、換言スレハ外國人カ結局米國人トナルモノナルヤ否ヤハ該權利ノ許否上加州ノ問ハサル所ナリ）之レ日本人ニ對スル差別ヲ設クルニ間接ノ用語ヲ以テシタルモノナルモ其日本ノ有スル條約上ノ權利ヲ尊重セサルノ點ニ於テ好マシカラサルハ一ナリトス

第四　世人或ハ米國ニ於テ外國人不動產所有問題ヲ處理スルノ權能ハ各州ニ專屬セリト論スルモノナキニアラス米國裁判所ノ權威アル判決例ニシテ右ノ議論反駁ノ爲ニ引用セラル可キモノハ多々アリト雖今ハ唯米國カ現行日米條約第一條第一項及第三項竝ニ舊日米條約第一條約定ノ當事者タルコト又若シ外國人不動產所有問題ヲ處理スルノ權能カ論者ノ言ノ如ク果シテ

種々ノ點ニ於テ兩國ノ政治及實益關係ノ須要ニ應スルニ足ラス」トノ理由ヲ以テ之ヲ終止ス可キ旨ヲ以テナリ

抑モ露國ノ行爲ハ專ラ米國人民タル猶太人ノミヲ排斥シタルモノニアラス一切ノ外國人タル猶太人ニ對シテ一樣ニ仕向ケラレタルモノナリ而シテ件ノ異議ヲ招クニ至リタル差別的待遇タル人種及宗教ノ理由ニ因リタルコト少カラスト雖亦幾分ハ經濟上ノ考慮ニ基キタルモノナリトハ露國ノ辯明セル所ナリ若シ斯ル事態ノ下ニ於テ米國政府カ露國ノ行爲ニ對シ抗議スル十分ノ理由ヲ有セストハ帝國政府ハ加州ノ忌ハシキ差別待遇ニ對シ抗議スルノ更ニ有力ナル理由ヲ有セスンハアラス蓋シ右ノ差別待遇タル啻ニ條約ノ明文ト相容レサルノミナラス其根底ニ於テ國民的且人種的ナルヲ以テ明ニ他國民ノ感情威信ヲ傷害スルモノナレハナリ

第三　米國內ノ諸州中外國人ニ對シテハ歸化法ノ規定ニ從ヒ米國人民トナルノ意思ヲ屆出ルヲ以テ不動產所有權ヲ得ルノ條件トナスモノ數多アリ右ノ條件ハ必スシモ不當又ハ非論理的ノモノナリト言フ可ラス蓋シ之ニ依リテ件ノ權利ヲ獲得スル者ハ結局米國人民トナル者ニシテ若シ法定ノ期間ニ於テ米國人民トナラサル時ハ右ノ權利ハ當然消滅ス可キカ故ニ該權利存續ト歸化行爲完了トノ間ニ離ル可ラサル關係ヲ生スルモノナレハナリ

反之外國人ニ對シ單ニ其歸化能力ノ有無ノミヲ以テ不動產所有權許否ノ條件トナスハ獨リ加

互的ニ通商航海ニ關シ最惠國待遇ヲ與ヘ居住ノ權利、商業ノ目的ノ爲家屋及倉庫ヲ賃借シ及動產ヲ相續スルノ權利竝ニ身命財產ノ保護ヲ供與セルノミナリ故ニ米國ノ異議ヲ唱ヘタルハ件ノ差別的待遇カ條約ノ明文ヨリハ寧ロ其精神ヲ無視スル所アリタルカ爲ナリト想定セサルヲ得ス

人種ニ基ク不當ノ差別的待遇ニ至リテハ其非ヤ更ニ甚シキモノアリ露國ノ猶太人虐遇ニ對シ米國ハ深ク憤ル所アリ千九百十一年十二月十三日合衆國下院ハ一對三百一ト云フ非常ノ多數ヲ以テ極力露國ノ行爲ヲ批難セル決議案ヲ通過セリ該決議ハ宣言シテ曰ク「米國ハ其人民ノ權利カ人種又ハ宗教ノ爲國內又ハ國外ニ於テ傷害セラル可ラサルモノナルコトヲ根本原則トシテ主張スルモノナリ米國政府ハ人種又ハ宗教ノ異同ニ關スルコトナク其人民全部ニ同一保護ヲ與フル爲ニ條約ヲ締結スルモノナリ米國政府ハ人種又ハ宗教ノ異同ノ爲米國人民間ニ甲乙ノ差別ヲ設ケ又ハ設クルモノナリト締約國ノ一方ニ於テ解釋セラルルカ如キ條約ニ加盟スルモノニアラス露國政府ハ人種及宗教ノ理由ニ依リ米國政府ノ正當ニ米國人民ニ發給シタル旅券ヲ承認スルコトヲ拒絕シタルニ於テ千八百三十二年十二月十八日ノ米露條約ヲ侵犯シタルモノナリ」ト該決議ハ是等ノ理由ニ依リ米露條約ヲ破棄センコトヲ大統領ニ迫リシカ右ノ決議案通過確定後三日ニシテ米國政府ハ露國政府ニ通告スルニ米露條約ハ「今日ニ至リテハ

精神ト相容レス又友好國間ニ於ケル通商關係ヲ規律スル上ニ於テ一般ニ認メラレタル原則ニモ悖ルモノナリトノ信念ヲ有スルモノナリ

國際關係ニ於テ均等待遇ノ原則ニハ時ニ或ハ例外又ハ制限ナキヲ保セスト雖苟モ「通商及航海ニ關スル一切ノ事項ニ付」最惠國條款ヲ存スル通商條約締盟國ノ一方カ這般條約ニ於テ相互交讓ノ主題トセル事柄ニ關シ他ノ一方ヨリ無條約國ヨリモ更ニ不利ナル地位ニ置カルルハ蓋シ今回ヲ以テ嚆矢トス可シ（譯註、加州土地法ノ結果日本國臣民ハ現下米國ノ無條約國タル露國臣民ヨリモ更ニ不利ナル地位ニ置カルルナリ）

抑モ國際上差別待遇ノ如何ナル場合ニ於テモ忌ハシキモノタルハ言フ迄モナク若シ右ノ差別ニシテ實際ノ且普ク認識セラレタル必要ノ限界ヲ踰越スルニ於テハ其條約上ノ規定ニ牴觸スルト否トニ論ナク國交ノ親善ヲ害スルヤ論ヲ須タス這般必要ノ限界ヲ一定シ機會均等ノ主義ヲ確立スルニ於テ米國以上ニ強硬ナル主張ニ出テ若ハ權威ヲ揮ヒタル國ハ未タ曾テコレアラサルナリ例ヘハ千八百七十九年米國國務長官ハ其在墨米國公使ニ與ヘタル訓令中ニ宣言シテ曰ク「墨國ニ於ケル不動產所有ノ能力ニ關シ米國人民及他ノ外國人ニ不利ナル差別的待遇ヲ與フル墨國法律ハ千八百三十一年ノ條約ニ牴觸スルモノナリ」（「ムーア」氏國際法規彙纂第六卷第七〇二頁）ト右援用ニ係ル條約ハ不動產所有ノ問題ニ關シ何等明確ノ規定ヲ存セス唯相

旨ヲ支持スルモノ少カラス益〻以テ帝國政府ノ信念ヲ強固ナラシムル所以ナリ

當面ノ關係ニ於テ帝國政府カ特ニ援用セントスル判決例ハ左記ノ諸事件ニ關スルモノナリ

「フエーヤフアックス」ノ受遺者對「ハンター」ノ賃借人事件

「シラック」對「シラック」事件

「オル」對「ホッヂソン」事件

聖書傳道協會對「ニューヘブン」市事件

「ジョフロア」對「リッグス」事件

支那人排斥事件

右ノ「シラック」對「シラック」事件、聖書傳道協會對「ニューヘブン」市事件及支那人排斥事件竝ニ「ワットソン」對「ドンネリ」事件(一八五九年紐育高等法院)ニ關スル判決例ニ於テ條約上一旦正當ニ取得セラレタル權利ハ條約其レ自身ノ廢棄セラレタル後ト雖尚存續スルモノナリトノ原則ハ明ニ宣明セラレタリ

第二　更ニ又帝國政府ハ該土地法ノ規定ハ國際關係ニ於テ外國人ニ與フルニ內國民又ハ最惠國民ト同一待遇ヲ以テスルヲ通則トスル事柄ニ關シ日本國臣民ニ對シ當ニ米國人民ト比較シテ劣レルノミナラス他ノ外國人ト比較スルモ尚劣レル待遇ヲ與フルモノナルヲ以テ日米條約ノ

二　該條約第一條第一項ハ日本國臣民ニ與フルニ米國人民ト同一待遇ノ保證ヲ以テセルノミナラス日本國臣民ノ財產ハ同條第三項ニ依リ米國人民ノ財產ト同ク同一法律ノ同一保護ヲ享受スルモノナルヲ以テ米國人民ノ財產權カ依然トシテ完全安固ナルニ反シ該法カ獨リ條約ノ下ニ日本國臣民ノ正當ニ取得シタルハ不動產又ハ之ニ關スル利益ヲ遺言ニ依リ受遺者ニ又ハ法定相續ニ依リ相續人ニ轉交スルノ能力ヲ褫奪スルハ前記兩條項ノ規定ト相容レサルモノナリ

三　該法ハ加州法律ノ下ニ日本國臣民ノ既ニ正當ニ取得セル不動產又ハ之ニ關スル利益ヲ遺言又ハ法定相續ニ依リ轉交スルノ能力ヲ褫奪スルモノナルカ故ニ前顯條約第一條第三項ノ規定ニ反スルモノナリ蓋シ右ハ斯ル財產ノ依テ以テ取得セラレ所持セラルル契約上ノ義務ヲ減損シ條約ノ與フル財產ニ對スル同一保護ノ保證ヲ日本國臣民ヨリ奪フモノナレハナリ

帝國政府ハ又件ノ法律ハ千九百十一年七月十七日以前即チ舊條約ノ有效期間ニ於テ適法ニ取得シタル不動產又ハ之ニ關スル利益ヲ隨意ニ處分スルコトニ關スル日本國臣民ノ權利ヲ剝奪スルモノナルカ故ニ舊條約即チ一千八百九十四年ノ條約ノ下ニ發生シタル既得權ヲ毀損スルモノナリトノ意見ヲ持スルモノナリ夫ノ令名高キ米國高等法院ノ判決例中ニモ能ク敍上ノ論

斯ル事態ノ下ニ於テ今次ノ外國人土地所有法ハ制定セラレタルモノニシテ實ニ日本國臣民ノ正當ニ取得シタル不動產又ハ之ニ關スル利益ヲ遺贈又ハ法定相續ニ依リ處分シ又ハ斯ル財產又ハ利益ヲ遺言又ハ相續ニ依リ取得スルノ能力ヲ褫奪スルモノナリ

該法ハ又會社組合等ニ關シテモ同ク異議ヲ挾ム可キ規定ヲ存スルモ本覺書ノ目的ハ專ラ個人ノ權利ヲ侵害スル點ニ就テノミ論議ヲ試ムルニ在ルヲ以テ法人ニ關スル規定ニ就テハ暫ク研究ヲ留保ス可シ

帝國政府ノ確信スル所ニ據レハ不動產及之ニ關スル利益ノ取得及處分ニ關シ日本國臣民ノ有スル條約上ノ權利ヲ毀損シ或ハ加州法律ノ下ニ正當ニ取得シタル既得ノ不動產所有權ノ安固ヲ脅サントスル該法ノ規定ハ左記ノ諸點ニ於テ現行條約ノ明文ニ違反スルモノナリ

一　該法ハ日本國臣民ノ從來自由ニ享有シタル所有家屋又ハ住居及商業ヲ目的トスル賃借地ヲ遺言又ハ相續ニ依リ取得スルノ能力ヲ奪フモノナルヲ以テ該條約第一條第一項ニ牴觸スルモノナリ蓋シ該項ハ米國人民ト同一ノ條件ニ依リ一切ノ目的ノ爲家屋ヲ所有シ住居及商業ノ目的ノ爲土地ヲ賃借スルノ自由ヲ日本國臣民ニ付與スレハナリ而シテ此點ニ關スル米國人民ノ自由カ毀損セラレ又ハ消滅セシメラレタリトハ未タ嘗テ聞カサル所ナリ

ノ條件ニ依リ住居及商業ノ目的ノ爲土地ヲ賃借スルコトヲ得ル日本國臣民ノ自由モ亦賃借權同一ノ取得處分ニ關シ米國人民ノ有スル所ト同一ノ自由ヲ伴フモノナルコトハ勿論ナリトス」更ニ又加州現行法律ノ下ニ於テハ（新定外國人土地所有法ハ八月十日迄ハ效力ヲ生セス）日本國臣民ハ一切ノ不動產及之ニ關スル利益ヲ取得シ、所持シ及處分スルノ完全ナル權利ヲ享有ス右ノ權利タル之ト共ニ這般ノ財產ヲ遺贈シ及法定相續ニ依リ移轉スルノ能力ヲ伴フ現行日米條約ハ又相互的ニ日本國臣民ニ保證スルニ其米國內ニ於ケル財產ニ對シ米國人民ノ享受スル所ト同一ノ保護及保障ヲ與フルコトヲ以テセリ

又明治四十四年現行條約ニ依リ廢棄セラレタル千八百九十四年ノ日米條約第一條ニハ左ノ規定アリ

（前略）動產ノ相續竝ニ合法ニ得ル所ノ各種財產ヲ如何ニ處分スルコトニ關シ兩締盟國ノ一方ノ臣民或ハ人民ハ他ノ一方ノ領土內ニ在リテ內國若ハ最惠國ノ臣民或ハ人民ト同樣ノ特典、自由及權利ヲ享有ス（後略）

日本國臣民ハ敍上ノ條約及加州々法ノ規定ニ信賴シ加州ニ於テ土地及家屋ノ所有者トナリ賃借者トナリタルモノナリ而シテ如斯シテ取得シタル不動產ハ何レノ點ヨリ見ルモ這般所有者及賃借者ノ完全ナル既得權ヲ構成ス

帝國政府第二回抗議追加覺書

第一　現行日米條約ハ相互主義ニ基キ日本國臣民ニ付與スルニ米國内ニ於テ同國人民ト同一ノ條件ニ依リ家屋ヲ所有又ハ賃借シ且住居及商業ノ目的ノ爲土地ヲ賃借スルノ自由ヲ以テセリ

右「所有」ナル語ハ最モ廣汎ナル意義ヲ有シ該條約文中ニ於ケル前後ノ關係ヨリ考フレハ普通ニ認メラレタル一切ノ適法手段即チ賣買、遺贈及相續ニ依リ件ノ不動産（譯註、家屋）ヲ取得スルノ權利ヲ意味シ且右適法ノ手段ニ依リ取得シタル財産ヲ法律上ニ認メラレタル一切ノ方法即チ賣買、贈與、遺贈及相續ニ依リ處分スルノ權利ヲ包含スルモノナリ換言スレハ財産所有權ハ其必然附帶ノ事實トシテ財産ヲ自由ニ讓渡スノ權利ヲ伴フモノナリ而シテ該條約中ニ表ハタル「所有スルノ自由」ナル語ハ更ニ又「米國人民ト同一ノ條件ニ依リ」云々ナル相互均等ノ規定ニ依リ補足セラルルコト及米國人民ノ享有スル右ノ自由ニシテ完全ナルモノタル以上條約ノ規定ニ依リ日本國臣民ニ付與セラレタル自由モ亦均シク無制限ノモノタルコトノ二點ヲ考量スルニ於テ本問題ニ關スル一切ノ疑惑ハ之ヲ一掃スルヲ得可シ如斯ニシテ又米國人民ト

之ヲ避ケサル可ラサルハ論ヲ俟タス日本人ハ偶〻歐米人ト人種ヲ異ニスト雖而カモ情感、志望、抱負、主義等ニ於テ何等彼等ニ讓ル所ナク其期スル所ハ世界文明ノ進歩ニ應分ノ貢獻ヲ爲サントスルニ在リ而シテ日本國民ハ米國カ重キヲ兩國民親善關係ノ維持ニ措クヲ見テ歡喜ノ情ニ堪ヘサルモノナリ何トナレハ是レ日本政府ヲシテ一般平和ノ確保上志望目的兩ナカラ崇高ナル米國ニ對シ其協力幇助ヲ期待セシムル所以ナレハナリ

帝國政府ハ目下係爭中ノ難件ニ關シテ米國政府ノ採リタル措置ヲ深ク諒トシ更ニ大統領ニ於テ敍上ノ所見ニ懇篤ナル考慮ヲ與ヘラレンコトヲ切望スルモノナリ

（大正二年六月五日在日本國大使ヨリ大統領ニ手交）

日米國交ニ關スル帝國政府特別覺書

（大正二年六月五日珍田大使ヨリ大統領ニ手交）

纔ニ太平洋ヲ隔テテ相隣セル日米兩國民ノ經濟上社會上互ニ接觸スルハ自然ノ現象ニシテ如斯相互ノ接觸カ兩國國運ノ平和的發展ニ伴フテ益〻其度ヲ加フ可キハ實ニ必至ノ勢ナリト云フ可シ然ルニ斯ノ接觸ニ際シ偶〻何等不快ノ事態ヲ生シタレハトテ地理上兩國隣接ノ關係ハ之ヲ改ム可キニアラストセハ寧ロ交讓和協以テ永ク善隣ノ誼ヲ全ウスルコト相互ノ幸福タラスンハアラス而シテ之ヲ爲ス一ニ兩國民互ニ他ヲ遇スルニ禮ヲ以テスルニ在リ若シ然ラスシテ其一方カ他ノ一方ニ與フルニ不公平ノ待遇ヲ以テスルカ如キコトアランカ其間ニ物議ノ生スルハ必然ニシテ爲ニ經濟上社會上兩者ノ均シク被ル損害ハ少々ナラサル可シ果シテ然リトセハ兩國間ニ生スルコトアルヘキ一切ノ物議ヲ排除シ得可キ平和的手段ヲ發見スルハ各自ノ利益、冀望及相互ノ傳來的關係ニ顧ミ兩國民ノ避ケント欲スルモ得可カラサル重大ナル義務ナリト言ハサルヘカラス而シテ斯ノ方法ヲ發見センコトセハ兩國國民互ニ寬恕友愛竝ニ恭敬ノ精神ヲ以テ相接シ其間事ニ處スルニ當リテハ須ラク公明正大苟クモ他ノ威信ヲ損シ感情ヲ害スルカ如キ行動ハ力メテ

ルモノトスルヲ以テ有之候

本件法案ノ立法ニ當リ現ニ我邦人ノ所有地ニ相當スル土地ノ面積ハ決シテ大ナルモノニアラサルノミナラス米國在留民ニ關スル帝國政府ノ政策ニシテ若シ本法律ノ目的スル所ニシテ果シテ合衆國對日ノデリートセハ之カ固定ハ實ニ理由ナキ一片ノ相違ニ過キサルヘシト信スルヲ以テ本法案ノ審議ニ際シテハ此點ニ關シテハ何等ノ考慮ヲ拂ハサルヘシト信スル次第ニ有之候

大正十三年六月廿一日

在米國特命全權大使　幣原喜重郎

内閣總理大臣　加藤高明殿

定ノ根底ニ蟠ル忌ハシキ人種上ノ差別カ自然ニ彼等ノ國民的自負心ヲ損傷スルモノアルカ故ニ有之候唯タ歸化ノ問題タル國内政治ノ問題ニシテ國際政治ノ問題ニアラサルカ故ニ右ノ差別カ純然タル政治上ノ權利ニノミ適用セラルル限リ帝國政府ハ本問題ニ關シ米國政府ニ迫ル可キ何等ノ機會ナカリシモ本件ノ場合ニ於ケルカ如ク右ノ差別カ他國ノ人民ニハ自由ニ附與セラレ居ル私權ヲ日本國臣民ヨリ褫奪スルノ目的ニ使用セラルルニ及ンテハ帝國政府タルモノ兩國ノ好誼親善ノ關係ニ顧ミ本來不精確ニシテ且誤解ヲ招キ易キ斯ノ人種上ノ差別タル決シテ私權享有上ノ差別ヲ設クルノ正當ナル理由ヲ供スルモノニアラスト確信スル所以ヲ率直ニ表明セサル可ラサル次第ニ有之候

本使ハ玆ニ貴官ニ向テ重テ最高ノ敬意ヲ表シ候　敬具

大正二年六月四日

スルモノナルカ故ニ有之候

本件差別的立法ニ關シ加州ニ於テ現ニ我邦人ノ所有竝ニ租借スル土地ノ面積ハ決シテ宏大ナルモノニアラサルノミナラス米國行移民ニ對スル帝國政府ノ取締ハ依然トシテ嚴重且誠實ナルヲ以テ若シ該法律ノ目的ニシテ果シテ全然經濟的ナリトセハ之カ制定ハ實ニ理由ナキ一片ノ杞憂ニ基キタルモノナリト言ハサルヲ得サルヘク尚斯點ニ關シテハ該法ノ專ラ農業用土地ノミニ關スルモノニアラサルコトモ亦閑却スヘカラサル儀ト思料致候將又假リニ該法カ全然經濟的理由ニ基キテ制定セラレタルモノナリトスルモ其事實ハ以テ我邦人既得ノ財產權ヲ無效トシ又ハ毀害スルノ正當ナル理由ヲ構成スルモノナリトハ我政府ノ思惟スル能ハサル所ニ有之由來正義ノ感念ニ富メル米國政府カ其管內ノ一州ヲシテ苟モ條約ノ規定ヲ沒却シ又ハ修好善隣ノ相互的國際義務ヲ蔑視スルカ如キ行爲ヲ敢テセシムルモノナラントハ帝國政府ノ夢想タモナササル所ナルハ本使ノ貴官ニ向テ言明スルヲ憚ラサル所ニ有之候

終リニ臨ンテ本使ハ本國政府ヘ訓令ニ遵ヒ本使前同ノ公文提出ノ當時ニ於テハ未タ言及スルノ必要モナク又得策ナリトモ思ハレサリシ現問題ノ一局面卽チ米國ニ於ケル日本人土地所有問題トノ關係ヨリ生スル日本人歸化問題ニ付貴官ノ注意ヲ請ヒ置度シト存候抑モ日本國臣民ハ米國國籍ヲ取得スル能ハストセル米國國法ノ規定ハ日本政府及人民ノ快トセサル所ニ有之是レ右規

テ外國人土地所有問題ニ關シ條約ノ規定カ同州民ノ冀望ニ副ハサル場合ニ於テモ尚之ヲ尊重スルノ必要アリト思惟シタルモノナルヤ否ヤハ疑問ノ存スル所ニ有之候

事情如斯ナルヲ以テ來使ハ茲ニ本國政府ノ訓令ニ依リ帝國政府ニ於テハ乍遺憾本使前回ノ公文所陳ノ抗議全部ヲ支持スルノ不得已所以ヲ貴官ニ宣言スルノ義務ヲ有スル者ニ有之候抑モ日本國臣民ハ合衆國ノ憲法及法律上彼等ノ有スル權利ヲ强行スル爲ニ合衆國ノ裁判所ニ出訴スルノ自由ヲ有スルニアラスヤトノ貴官ノ辯疏ハ我政府ノ見テ以テ當面ノ時局ニ適應セリト思惟シ難キ所ノモノニ有之候我邦人ニシテ該立法ノ結果不當ノ損害ヲ蒙ルモノノ之カ救濟ヲ合衆國ノ法廷ニ求ムル可キハ論ヲ竢タスト雖帝國政府ノ確信スル所ニ依レハ本件ノ性質タル普通ノ外交手段ニ依リテ適當ニ之ヲ處理スルコトヲ得可キモノニ有之此儀ハ貴官ノ了解ヲ請ハンカ爲本使ノ十分明瞭ニ貴官ニ致サントスルトコロニ有之候則チ今日係爭中ノ問題ハ日米兩國政府間ノ問題ニシテ現行條約ノ眞正ナル意思及意義ニ關シ又公平ニシテ均等ナル相互待遇ノ原則カ國際禮儀及良心上幾許迄本件ノ場合ニ援用セラルル可キカニ關スルモノニ有之而シテ斯ノ問題ヲ惹起スニ至レル不當行爲タル一國民トシテノ我邦人ヲ目的トスルモノニシテ其合衆國政府ノ冀望及勸告ニ反シ同國內一州ノ官憲ニ依リテ遂行セラレタルモノナルハ事實ナリト雖而カモ日本ハ合衆國政府ニ對シテノ外之カ取消ヲ求メ得ル場所無之候之レ帝國政府ハ合衆國政府トノミ外交關係ヲ有

ノ權利ヲ我邦人ヨリ奪ハントスルニ在ルコト等ヲ考フルニ於テハ帝國政府ハ該法ヲ以テ不公平ニシテ且故意ニ人種的差別ヲ設クルモノナリトノ結論ニ到著セサラント欲スルモ能ハス又該法ハ之ヲ兩國間條約ノ規定ニ照スモ其明文及精神ト相容レサルモノアルノミナラス更ニ又友好國間ニ於ケル親善關係ノ根本義タルヘキ公正ニシテ均等ナル相互待遇ノ原則ニ恃ルモノナルハ帝國政府ノ齊シク信シテ疑ハサル所ニ有之候

將又我政府ハ右法律中貴官ノ認メラレタルカ如ク現行條約上ノ一切ノ權利ヲ尊重保持スルノ意思ヲ宣明セル點アルヲ發見スル能ハス該法カ其第二條ニ於テ歸化能力ヲ有セサル外國人ハ其本國ト米國トノ間ニ於ケル條約ノ規定セル範圍內ニ於テ不動產ヲ取得所有シ又ハ讓渡スルコトヲ得ト規定セルハ事實ナリト雖帝國政府ノ所見ニ依レハ右ノ規定ハ本使前回ノ公文ニ於テ援用シ今復タ茲ニ援用セントスル條約ノ規定ト調和スルコトヲ得サルモノニ有之候則チ日本國臣民ノ加州ニ於テ不動產又ハ之ニ關スル利益ヲ所有スルハ獨リ現行條約ニ由ルノミナラス亦併セテ法律ニ由ルモノナルヲ以テ斯ノ正當ニ取得セラレタル財產ハ條約ノ規定上米國市民ノ所有ニ係ル同種財產ト同樣ニ常ニ保護及保障ヲ受ク可キモノタルハ疑ヲ容ルルノ餘地ナキ儀ニ有之候而シテ本件土地法ヲシテ立法ノ眞目的ト兩立シ得ル限リ現行條約上ノ規定ト調和セシメンコトニ盡力ノ試ミラレタルハ疑ナシト雖該法第七條ニ包含セラレタル聲明ニ顧ミル時ハ加州議會ハ果シ

帝國政府第二回抗議

以書翰啓上致候陳者曩ニ加州ニ於テ制定セラレタル外國人土地所有法ニ關スル五月九日附本使ノ公文ニ對シ同月十九日附貴翰御回答ノ趣閱悉本使ハ直ニ之ヲ本國政府ニ電達致置候然ルニ右御回答ハ未タ以テ該法ニ關シ帝國政府ノ懷ケル憂慮ノ念ヲ減少スルニ足ラサルモノナルハ本使ノ遺憾トスル所ニ有之候先是該案ノ尚加州會議ニ於テ討議セラレツツアリシニ當リ米國政府カ本件ニ關シ同情アル態度ト行動ヲ執リタルノ事實ニ顧ミ帝國政府ハ本問題ノ滿足ナル解決ヲ得ンカ爲米國政府カ喜ンテ帝國政府ト協力スルノ意嚮ヲ有スルモノナルコトヲ示スニ吝ナラサル可キヲ期待スルニ於テ好箇ノ理由アリト思惟シタル次第ニシテ若シ我邦人ニシテ條約上ノ權利及保障ヲ奪ハレタリトスル場合ニハ合衆國ノ裁判所ニ於テ之カ救濟ヲ求ムルノ途アルニアラスヤト云フカ如キ辯疏ニ遇ハントハ固ヨリ其豫期シタル所ニ無之候抑モ該法ノ爲ニ不利ナル影響ヲ被ルモノハ歸化能力ヲ有セサル外國人ニ限レルヲ以テ日本國臣民ニハ米國ノ國籍ヲ取得スルノ權利ヲ附與セラレスト認メラルルコト及該法ノ爲メニ主トシテ苦痛ヲ感スルモノハ日本國臣民ナルコト且又該法本來ノ目的カ加州ニ於テ土地ヲ獲得所有スル

セントスル貴我雙方ノ冀望ニ對スル我々期待ノ實現ヲ進ムルノミナランコトヲ望ムモノニ有之候

本官ハ茲ニ重ヲ閣下ニ向テ最高ノ敬意ヲ表シ候敬具

千九百十三年五月十九日

次ニ貴大使ハ兩國間ニ友好關係ノ依然トシテ存續スルニ拘ラス條約ノ終止又ハ消滅セル場合ニハ如何ニス可キヤトノ問題ヲ提起セラレタルカ右ハ實際尤ナル問題ニシテ本官ハ之ニ對シ唯斯ル場合ニ於テハ合衆國政府ハ必スヤ條約ニ依リ現ニ保障セラルル兩國民間通商交通ノ權利ヲ擁護スルヲ以テ欣幸トシ且日本及日本國臣民ニ對スル誠實ナル友誼ノ命スル合衆國當然ノ義務ナリト思惟ス可シト答フルノ外無之米國政府カ名譽及利益ニ於テ兩國民ヲ連結スル交誼ヲ最モ誠實ニ維持スルカ爲ニ飽迄帝國政府ト協力セントスルモノナルハ本官ノ今改メテ閣下ニ證言スル迄モナキ所ニシテ米國政府ハ如何ナル事情ノ下ニ於テモ其負ヘル友誼上ノ義務ヲ履行スルニ吝ナラントシ又ハ之ヲ輕視セントスルモノニ無之日本ノ米國ニ對スル敬愛ノ念及近世世界ノ偉大ナル平和事業ニ關スル協力ハ我政府ノ深ク尊重シテ苟クモ失ハサラント欲スル所ニ有之而シテ本官ハ如斯國交ノ方針カ當合衆國內纔ニ一州ノ立法ノ爲ニ妨害セラル可シトスル何等ノ理由ナキコトヲ閣下ニ保證スルヲ得可シト信スルモノニ有之僅ニ一種ノ財產ニ對スル一州ノ經濟政策カ到底斯ノ豐宏ニシテ有利ナル國際交通及好情ノ强固不變ナル潮流ヲ轉スルヲ得サルハ申ス迄モナキ儀ニ有之候

終ニ臨ンテ本官ハ貴大使ノ本件ニ關シ率直誠意以テ我政府ニ對セラレタルヲ感謝シ且我等ノ代表スル兩大國ノ國交上ニ生シタル本事件ハ會々以テ相互ノ了解ヲ促シ併テ互ニ正義ヲ以テ應酬

ラス候

貴翰ハ該法中ノ規定ニシテ貴方ノ認メテ以テ兩國間現行條約ノ規定ニ牴觸シ既得ノ財産權ヲ傷害スト云ル點ニ付注意ヲ喚起セラレタリト雖該法ノ意思カ現行條約上ノ一切ノ權利ヲ尊重シ之ヲ保持スルニ在ルハ法文ノ明示スル所ニ有之而モ該法カ實施ノ結果其意思遂行ヲ愆レル場合有之ニ於テハ合衆國憲法上右憲法ニ遵由シテ締結セラレタル條約ノ規定ハ國内ノ最高法律ニシテ其拘束力ハ均シク州及合衆國裁判所ニ及ヒ如何ナル場合ニ於テモ司法上ノ手段ニ依リ之ヲ強行スルコトヲ得ルモノナルコトハ疑モナク帝國政府ノ知了セラルル所ニシテ爲之合衆國裁判所及州裁判所ハ條約上ノ權利又ハ保障ヲ奪ハレタリトスル何人ニ對シテモ公開セラレ居ル次第ニ有之此點ニ關シ民國人ハ我法律ノ下ニ於テ我國人ノ必スシモ總テノ場合ニ於テ有セサル一種ノ特權即チ我國人カ憲法上又ハ法律上ノ權利ヲ執行スル爲訴訟ヲ提起スルニハ普通州裁判所ニ於テセサル可ラサルニ反シ外國人ハ内國人ト全然同樣ノ手續ニ依リ而カモ直ニ合衆國裁判所ニ出訴スルヲ得ルノ特權ヲ有スルモノニ有之候貴大使ハ又條約第十四條ニ言及セラレタリト雖右ハ專ラ通商航海上ノ諸權利ニ關スルモノナルカ如ク加州ノ法律ハ是等ノ諸權利ニ何等ノ影響ヲ及ホスノ意圖アリトモ不被存該法起草者ハ契約上權利ニ何等ノ侵害ヲ來スコトナキ樣注意シタルモノノ如クニ思料被致候

合衆國政府第一回

以書翰啓上致候陳者外國人ノ農業用地所有問題ニ關シ近者加州ニ於テ制定シタル法律ニ對シ日本帝國政府ノ所見ヲ開陳セラレタル五月九日附貴翰正ニ領收致候

帝國政府カ件ノ立法ヲ以テ其人民ニ對スル非友好的態度ヲ示スモノナリト認メラレントスルハ合衆國政府ノ最モ誠實ニ遺憾トスル所ニ有之候曩ニ該法ノ尙加州議會ノ討議ヲ經ツツアリシニ當リ帝國政府ノ所感或ハ如斯モノアランコトヲ慮リ大統領及本官ハ加州ハ一個獨立ノ州トシテ單獨ニ行動ス可ラス寧ロ合衆國政府ト協力スヘキモノナル所以ヲ切言シ極テ熱心ニ加州立法當局者ノ本案ヲ再考シ又ハ變改センコトヲ求メタル次第ニ有之候モ其ノ以上ハ合衆國ノ憲法組織ニ於テハ吾人ノ爲スヲ許ササル所ニ有之同時ニ又本官ハ該立法ノ精神並ニ目的ニ關シ帝國政府ニ於テ誤解セラレタル所アルヲ虞ルモノニ有之候抑モ本件立法タル何等政治的意味ヲ有スルモノニ無之隨テ兩國間ニ於ケル最善最良ノ了解ト相容レサル何等ノ目的又ハ非友好的態度ノ存在ヲ示ス可キ一般的國是ニ基キテ企テラレタルモノニ無之問題ハ全然經濟的ニシテ農業經營上ノ競爭ヲ避ケントスル加州人民カ見テ以テ同州ニ存在ストセル特殊ノ經濟事情ニ基クモノニ外ナ

ヲ與ヘタル其好意ニ顧ミ今次ノ問題モ亦兩隣邦ノ間ニ存スル歴史的親交關係ニ適合ス可キ解決ヲ見ンコトニ多大ノ希望ヲ屬スルモノニ有之候

本使ハ玆ニ貴官ニ向テ重テ最高ノ敬意ヲ表シ候　敬具

大正二年五月九日

法ノ制定セラレタル爲歸化能力ヲ有スル外國人ニ在リテハ曾テ懸念ノ要ナキ重大不斷ノ危險ニ曝サルルコトトナル可ク如斯ニシテ多數日本人カ其家族生計ノ爲ニ多年ノ勤勞ニ依テ得タル正當ナル報酬ハ該法ノ下ニ彼等ノ何等關知スル所ナキ原因ニヨリ凡テノ保護ヲ失フニ至ル可キ次第ニ有之候

該法案起草者及贊成者或ハ言ハン若シ日本人ニシテ其正當ノ權利カ傷害セラレタリトスル何等具體的事件ノ發生シタル場合ニ於テハ被害者ハ普通法定ノ手續ニ依リ之カ救濟ヲ求ムルノ途アルニアラスヤト然リト雖斯ル手續ハ必然多クノ時日ヲ要シ當事者ニ少カラサル苦痛ヲ與フルモノニシテ而モ斯ル不利不便ハ歸化能力ヲ有スル外國人ノ夢想タモセサル所ナルヲ考フルトキハ該法カ我邦人ニ對シ差別的待遇ヲ與フルノ結果ヲ生スルモノタルハ容易ニ認識セラル可キ儀ト被存候帝國政府ハ該立法中異議ヲ提出ス可キ他ノ諸點ハ暫ク之ヲ後日ノ考量ニ讓ルコトトシ此際最モ重キヲ置クハ普通國際間商業事項ニ關シテハ各國何レモ平和友好ノ關係ヲ有スル外國人ニ對シ或ハ國際禮讓ノ一義トシテ或ハ最惠國條款ノ適用ニ依リ均等ノ待遇ヲ與フルヲ常則トスルニ反シ該立法ニ於テ特ニ敍上ノ差別的待遇ヲ設ケタル點ニ存スルコトヲ十分明瞭ナラシメント欲スルモノニ有之候

帝國政府ハ人道及國際的友誼ノ爲米國政府カ從來日本政府ニ對シ常ニ懇篤ニシテ同情アル幇助

ス沒收セラルルコト可有之更ニ適切ニ之ヲ言ヘハ該法案ノ實行ハ我邦人ノ加州ニ於テ不動產又ハ之ニ關スル利益ヲ所有スルコトアルヘキ會社ノ株券ヲ所有スルノ權利ヲ奪フノ結果ヲ生スルモノニ有之蓋シ普通ノ營業的頭腦ト注意ヲ有スル者ハ何人ト雖沒收セラルルコトアルヘキ危險ヲ漫ニ冒スカ如キコトナカル可ケレハナリ苟モ如斯危險ノ伏在スルモノトセハ該法案ノ規定ハ日米條約第一條商業ニ關スル兩國人均等待遇ノ規定及同第十四條通商ニ關スル最惠國條款ノ規定ニ反スルモノト思考被致候

更ニ又該法案ハ歸化能力ヲ有セサル外國人ハ合衆國ト斯ル外國人ノ本國トノ間ニ現ニ存在スル條約ニ規定セル方法範圍目的ニ限リ不動產又ハ之ニ關スル利益ヲ取得、占有、享有又ハ移轉シ得ルコトヲ規定セル所右「現ニ存在スル條約」ナル語ノ果シテ現行條約更訂ノ爲又ハ其補足トシテ今後締結セラルル可キ如何ナル條約ヲモ包含スルノ趣旨ニ出タルヤ否ヤノ問題ハ暫ク措キ二個ノ友好國カ其間ニ存スル親善關係ヲ毫モ損傷スルコトナクシテ無條約ノ狀態ニ陷ルコトハ往々ニシテ起ル所ノ現象ニ有之若シ期ル事態ニシテ日米間ニ生センカ歸化能力ヲ有スル外國人ハ條約ノ有無ニ拘ラス該法ノ下ニ加州ニ於ケル不動產所有ノ權利享有ニ關シ米國人ト同一ノ待遇ヲ與ヘラルルニ反シ獨リ日本國臣民ハ之カ爲ニ同州ニ於テ現ニ條約ニ依リ保障セラルル不動產ニ關スル一切ノ權利ヲ奪ハルルコトト可相成隨テ日本人ノ適法ニ且善意ニ取得シタル權利ハ新

觸スルコト一層甚シキモノ有之乃チ日本國臣民ハ相互的ニ合衆國人民ト同一條件ノ下ニ家屋、製造所、倉庫及店舗ヲ所有スルノ權利ヲ享有スルヲ以テ該權利ニ關スル特殊ノ制限ハ其取得及移轉ニ關スルモノタルト其他ニ關スルモノタルトヲ問ハス總テ條約第一條第一項及第三項ト相容レサルモノニ有之候

次ニ住居及商業ノ目的ノ爲ニ土地ヲ賃借スルコトヲ得ル我邦人ノ權利ニ關シテモ亦該法案ノ規定中一樣ニ合衆國人民タル賃借權者ニ適用セラレサル一切ノ制限ハ均シク前顯條約ノ規定ニ反スルモノト被相認候

將又該法案中會社ニ關スル規定ニ就テモ同樣異議ヲ挾ム可キモノ有之卽チ會社ノ解散ニ際シ其現ニ所有スル不動產ヲ其社員ニ分配スルコトニ決シタル時ニ於テハ總テノ日本人社員ハ差別的ニ右分配ヨリ除外セラレ其既得權ヲ毀損セラルルコトトナル可ク其他ニ於テモ我邦人現有ノ權利カ該規定ノ結果極メテ不當ニ傷害セラルル場合アルハ想像ニ難カラサル可シ殊ニ其株券ノ一般市場ニ於テ賣買セラルル會社ノ場合ニ於テ然リトス例ヘハ日本國臣民カ斯ル會社ノ株券ヲ講入シ其結果トシテ適法ニ右會社ノ財產ニ對スル一部ノ利益ヲ有スルコトトナリタル後ニ至リ若シ歸化能力ヲ認メラレサル點ニ於テ日本人ト同一ノ地位ニ在ル外國人カ善意ニ右會社ノ株券ヲ講入スルトキハ爲ニ曩ニ日本人ノ適法ニ取得シタル利益ハ彼等ニ於テ何等不法行爲ナキニ拘ラ

帝國政府第一回抗議

以書翰啓上致候陳者帝國政府ハ外國人土地所有問題ニ關スル法律案ノ曩ニ加州議會ヲ通過シタルノ報道ニ接シ遺憾措ク能ハス遂ニ米國政府ニ向テ眞摯ナル抗議ヲ提出スルノ不得已ニ至リ候乃チ本使ハ玆ニ帝國政府ノ訓令ヲ奉シ謹テ之ヲ貴官ニ呈スル次第ニ有之候

帝國政府ノ所見ニ據レハ該法案タル其本質ニ於テ不當且差別的ニシテ我邦人ノ排斥ヲ主眼トスルモノタルノ事實ハ之ヲ蔽ハントスルモ得可ラス隨テ本抗議ノ論據ハ該法案ノ正義公道ニ悖リ曾ニ日本臣民現有ノ權利ヲ傷害スルノミナラス又日米現行條約ノ規定ニ牴觸シ且兩國條約關係ノ基礎タル修好親善ノ精神及本義ニ背反スルモノナリトスルノ點ニ存スル次第ニ之有候

抑モ本件立法タル我邦人ノ適法ニ取得シタル土地ノ所有權ヲ其正當相續人ニ移轉スルノ權利ヲ褫奪スルノ結果ヲ來スモノニ有之然ルニ元來財產權移轉ノ完全ナル權利ハ財產ノ適法ニ取得セラレタル時ニ於テ之ニ隨伴スル所ノモノナルヲ以テ今ニ於テ之ヲ無效トスルハ明ニ日米條約第一條第三項中相互主義ニ依リ日本國臣民ハ米國內ニ於テ其財產ニ對シ常ニ保護及保障ヲ享受ス可シトノ規定ニ牴觸スルモノニ有之更ニ又所有家屋ニ關スル點ニ於テ該法案ハ條約ノ規定ニ牴

裁判所ハ先ッ當該賃借權又ハ其他ノ權利ノ價額ヲ評定シ右ノ金額ニ手續ニ要スル費用ヲ加算シタルモノヲ州ニ交付スルノ判決ヲ下シ後民事訴訟法第千二百七十一條規定ノ方法ニヨリ賃借權若ハ其他ノ權利ノ目的タル當該不動產ノ賣却ヲ命シ右賣却代金中ヨリ前記州ノ所有ニ屬スヘキ金額ヲ州金庫ニ交付ン殘額ハ裁判所之ヲ保管シ利益ノ順位ニヨリ利害關係人ニ之ヲ分配スヘシ

第七條　本法ノ規定ハ本州內ニ於ケル外國人ノ不動產ノ取得保有及處分ニ關スル本州ノ法律制定權ニ何等ノ制限ヲ加フルモノニアラス

第八條　本法ノ規定ニ牴觸スル法規ハ總テ之ヲ廢止ス

ヲ得

第四條　管轄裁判所ニ於テ遺產處分又ハ遺言執行ノ手續中當該相續人若ハ受遺者中ニ本法ノ規定ニヨリ本州內ノ不動產ヲ取得スルヲ得サル者アルトキハ裁判所ハ該不動產ヲ相續人又ハ受遺者間ニ分配セシメス不動產遺產處分賣拂ニ關スル法規ノ定ムル手續ニ依リ賣却ヲ命スヘク其賣却代金ハ相續人又ハ受遺者間ニ分配セラルヘシ

第五條　第二條ニ揭クル外國人又ハ第三條ニ揭クル會社若ハ團體ニシテ將來本法ノ規定ニ反シ不動產ヲ取得シタルトキハ該不動產ハ沒收セラレ州ニ歸屬ス檢事總長ハ加州行政法第四百七十四條並ニ民事訴訟法第三篇第八章ノ定ムルトコロニ依リ當該不動產ニ係ル沒收處分ノ判決ニ關シ必要ナル手續ヲ執ルヘシ當該不動產ノ州ニ歸屬スルハ右裁判決定ノ後タルヘシ將來外國人又ハ會社若ハ團體ニシテ既ニ設定セラレタル不動產上ノ擔保權行使ノ結果當該不動產若ハ不動產ノ利益ヲ取得シタル場合ハ右ノ財產カ當該所有者ニ屬スル限リ第二條、第三條及本條ハ之ヲ適用セラレサルヘシ

第六條　第二條ニ揭クル外國人又ハ第三條ニ揭クル會社若ハ團體カ將來本法ノ規定ニ反シ不動產賃借權若ハ不動產ニ關スル其他ノ權利ヲ取得シタルトキハ州ニ沒收セラルヘシ檢事總長ハ第五條ノ規定ニ從ヒ沒收ノ判決及判決執行ノ處分ニ關シ必要ナル手續ヲ踐ムヘシ

加州外國人土地所有法

第一條　合衆國々法ニ依リ合衆國市民タルヲ得ル總テノ外國人ハ州法ニ他ノ規定無キ限リ合衆國市民ト同一ノ方法及範圍ニ於テ本州内ニ於ケル不動產若ハ不動產上ノ利益ヲ取得保有使用讓渡遺贈及相續ヲ爲スコトヲ得

第二條　第一條ニ揭クルモノニアラサル外國人ハ合衆國政府ト當該外國人ノ本國トノ間ニ存在スル現行條約ニ規定セラレタル方法範圍目的ニ於テノミ本州内ニ於ケル不動產若ハ不動產上ノ利益ヲ取得保有使用及讓渡スルコトヲ得又三年ヲ超エサル期間農業用ノ目的ヲ以テ本州内ニ於ケル土地ヲ賃借スルコトヲ得

第三條　本州又ハ他州若ハ外國ノ法律ニヨリ組織セラレタル會社又ハ團體ニシテ其社員ノ多數カ第一條ニ特定セラレサル外國人ナルカ又ハ其發行株式ノ過半數カ是等外國人ノ所有ニ係ル場合ハ合衆國政府ト當該社員又ハ株主ノ本國トノ間ニ存在スル現行條約ニ規定セラレタル方法範圍目的ニ於テノミ本州内ニ於ケル不動產若ハ不動產上ノ利益ヲ取得、保有、使用及讓渡スルコトヲ得又三年ヲ超エサル期間農業用ノ目的ヲ以テ本州内ニ於ケル土地ヲ賃借スルコト

第弐条　帝国政府第三回回答書
第八条　合衆国政府第二回回答書仏文
第七条　合衆国政府第二回回答書
第六条　帝国政府第二回覚書仏文
第五条　日米国交ニ関スル帝国政府特別覚書
第四条　帝国政府第二回覚書
第三条　合衆国政府第一回回答書
第二条　帝国政府第一回覚書
第一条　在仏所仏大使加瀬俊一

添付書類

第一號　加州外國人土地所有法

第二號　帝國政府第一回抗議

第三號　合衆國政府第一回回答

第四號　帝國政府第二回抗議

第五號　日米國交ニ關スル帝國政府特別覺書

第六號　帝國政府第二回抗議追加覺書

第七號　合衆國政府第二回回答

第八號　合衆國政府第二回回答追加覺書

第九號　帝國政府第三回抗議

ル處アルヘキヲ信シ該文書ヲ公表スルヲ欲スル旨國務長官ニ通告セラルヘク候

貴官ハ本訓令ヲ實行セラルルニ當リ本書ノ寫ヲ「ブライアン」氏ニ交付セラレ差支無之候

ニ有之候尤モ帝國政府ハ加州ノ該行爲タル歷史上類例ナキ所ニ係ルヲ信シ候ト同時ニ本件立法ハ畢竟不幸ナル地方的狀態ノ餘果ニ過キスシテ合衆國政府ノ一般政策トハ何等ノ關係ヲ有スルモノニアラサルヲ信スルヲ欣幸トスルモノニ有之候

右ノ次第ニツキ本大臣ハ貴官カ前大臣ノ訓令ニ從ヒ本件ニ關シ國務長官ニ提示セラレタル所見ニ對シ滿腔ノ同意ヲ表スルモノニ有之又國際的交讓及友誼ノ爲牧野男爵カ本問題ニ關シ一ノ協約ヲ締結スルノ考案ヲ支持セラレタル心機ヲ衷心諒トスルモノニ有之候モ該考案タル現在ノ趣意ニテハ當面ノ異論ヲ是正セスシテ寧ロ新ナル困難ヲ誘起スルノ虞アルモノト被相認候

依テ貴官ハ「ブライアン」氏ニ對シ帝國政府ハ從來討議セラレタル考案ノ趣旨ニ基ク協約ノ締結ヲ目的トスル商議ヲ繼續スルノ意ヲ有セス寧ロ右無效ノ商議ノ爲中絕シタル彼我ノ往復ニ復歸スルヲ欲スル旨竝ニ本問題研究ノ再開ニ依リ幸ニ本件ノ根本的解決策ヲ發見セラルル事アルヘキヲ信望シ昨年八月二十六日貴官カ「ブライアン」氏ニ手交セラレタル書面ニ對スル回答ヲ得ルヲ期待スル旨可被申入候

將又協約締結ノ方法ニ依リ本件爭議ヲ處理スルヲ目的トセル商議不調ニ歸シタル以上從來本問題ニ關シ兩國政府間ニ往復セル文書ヲ此上祕密ニ附スルノ利益ハ最早相認メ難ク候ニ付貴官ハ帝國政府ニ於テハ本問題ニ關スル更ニ充分ニシテ且正確ナル智識ハ紛議ノ最終的解決上貢獻ス

加藤外務大臣

在米

珍田大使宛

昨年加州議會ノ議定ニ係ル外國人土地所有法ノ結果トシテ生起セル問題ハ曩ニ本大臣ノ就任ニ際シ接掌セル未了重要案件ノ一ニ有之候處御承知ノ通該法ハ事實上諸人種ニ屬スル外國人間ニ土地所有ノ事項ニ關シ差別ヲ設ケタルモノニ有之從テ立法ノ本意ハ一方ニ於テ日本人ノ關スル限リ既存ノ土地所有權ヲ拒否スルト同時ニ他方ニ於テ白人種及黑人種ニ屬スル外國人ノ爲ニ之ヲ存續セントスルモノニ有之候

本大臣ハ本問題ニ對シ最モ愼重ナル考量ヲ加ヘタル末該法タル啻ニ日米現行條約ノ明文及精神ニ副ハサルモノナルノミナラス我邦人ニ對シ實ニ不公平且差別的ニシテ恠ニ兩國ノ國交ヲ支配セル友好善隣ノ情誼トモ相容レサルモノナルヲ確認致候加之本大臣ハ該立法カ國際的效力ヲ齎スヲ目的トスルノ事實ニ鑑ミ加州ハ該立法ニ關シ其權能ヲ超越シタルモノナリトノ心證ヲ免カルル能ハサルモノニ有之何トナレハ國際的見地ヨリスレハ合衆國內ノ各州ハ箇々トシテハ何等存在ヲ認メラルルモノニアラス又外國ニ對シ全然責任ヲ負フヘキ位地ニ在ラサルモノナルカ故

第四　日米協約締結ニ關スル交渉

加州土地法ニ對スル帝國政府ノ抗議及之ニ對スル米國政府ノ辯明ハ前章ニ詳記セシカ其經過ヲ通觀スルニ米國政府ハ本件ノ解決案トシテ唯損害補償其他二三ノ件ヲ提唱シタルニ過キス又該法カ條約違反ナリヤ否ヤニ關シテモ之ヲ法廷ノ裁決ニ讓リ自ラ何等責任アル斷案ヲ下ササルヲ以テ結局帝國政府ハ本問題ヲ根本的ニ解決セント欲セハ米國ニ於ケル日本人ノ立場ニ關シ將來ヲ確保スヘキ何等協約ヲ彼我ノ間ニ取結ヒ現行條約ノ缺陷ヲ補フヲ以テ最モ適切ナル措置ト認メ其方策ニ關シ反覆攻究ヲ重ネタル結果右ノ趣意ニヨリ帝國政府ヨリ或種ノ提案ヲナスコトニ決シ昨年八月珍田大使ニ訓令シ國務長官ニ對シ一ノ協約案ヲ提示スル所アラシメタリ爾來珍田大使ハ本問題折衝ノ爲國務長官ト會見セルコト前後幾回ナルヲ知ラス時ニ或ハ大統領ニ謁見シテ親シク陳述スル所アリ當方ニ於テモ亦時ノ外務大臣特ニ本邦駐劄米國大使ト會見セル等彼我ノ交涉幾多ノ曲折ヲ重ネタリシカ結局米國政府提議ノ修正案ハ本協約ヲシテ加州問題ノ解決ニハ直接何等ノ關係ヲ有セサルニ至ラシムルモノナリシヲ以テ現政府ハ熟慮ノ末乍遺憾我提案ヲ撤回スルコトニ決シ本月九日ヲ以テ珍田大使ニ對シ左ノ如キ電訓ヲ發シ同大使ハ同十日ヲ以テ其寫ヲ國務長官ニ提示セリ

點ヲ提議シ終リニ移民問題ニ論及シタルモノニシテ國務長官ハ米國政府ノ權限内ニ於テハ乍遺憾結局右ノ外適當ナル解決案ヲ發見スル能ハサル旨ヲ述ヘタルニヨリ大使ハ右回答ノ到底我ニ於テ承服シ難キモノナル旨ヲ述ヘ主要ノ點ニ關シ縷々辯駁ヲ加ヘテ引取リシカ同月十六日ニ至リ國務長官ハ内示ヲ經タル前記草案ニ少許ノ修正ヲ加ヘタル上第二回回答竝ニ覺書トシテ正式ニ珍田大使ニ手交シタリ（別添第七號及第八號）

以上彼我兩國政府ノ應酬ニヨリ米國政府ノ加州土地法問題ニ對スル態度略ホ明白トナリタルモ帝國政府ハ更ニ辯駁トシテ第三回抗議書（別添第九號）ヲ草シ珍田大使ヲシテ八月二十六日國務長官ニ手交セシメタリ該抗議書ニ於テ帝國政府ハ土地法ハ米國ト相互的待遇ノ條約ヲ有スル日本國臣民ヲ驅テ無條約國民以下ニ貶スルモノニシテ差別的待遇ノ甚シキモノナルコト及帝國政府ハ本立法ヲ以テ人種的僻見ニ基クモノト認メ單ニ經濟的理由ニ基クモノト爲スヲ得サルコトヲ述ヘ尚國務長官カ前顯回答ニ於テ移民問題ニ論及セルニ對シ該問題ハ既ニ數年前日米兩國政府間ニ解決セラレ本件ト何等ノ關係ナク本件ハ單ニ在米本邦人ニ對シ公正平等ナル待遇ヲ要求スルニ過キサル旨ヲ附言セリ

如キ事アルヘカラサルヲ切言シタルモノナルカ之ヲ傾聽シタル大統領ハ日米國交ノ大局ニ關シテハ特ニ同大統領ノ重キヲ措ク所ナル旨ヲ宣明シタル後國務長官ト均シク珍田大使ヲシテ本件ノ純然タル經濟問題ニシテ決シテ人種的僻見ニ基クモノニ非ル旨ヲ了解セシメンコトヲ勗メ尙本件ニ就テハ更ニ研究ヲ重ネ若シ條約違反ノ點ヲ發見スルニ於テハ政府自ラ訴訟ヲ提起スヘキ旨竝ニ假令訴訟ヲ提起スルコトナキ場合ニ於テモ相當理由アルニ於テハ日本人ノ爲實際ノ損害ニ對シ賠償ノ方法ヲ講スルヲ辭セサルヘキ旨開陳セリ

其後帝國政府ハ加州土地法ノ日米通商條約ニ違反スル廉ニ關シ更ニ研究ヲ重ネ前記第二回抗議ノ補足ト、シテ追加抗議書ヲ作成シ別添第六號ノ通覺書トシテ七月三日珍田大使ヲシテ米國政府ニ提出セシメタリ

七月十日珍田大使ハ國務長官ノ招請ニヨリ國務省ヲ訪問シタルニ同長官ハ帝國政府ノ第二回抗議及覺書ニ對スル回答ノ草案ヲ朗讀シタルカ右回答案ハ頗ル長文ニシテ我指摘シタル諸點ニ對シ精細ニ論辯ヲ試ミタル上結局米國政府ハ本件救濟策トシテ(第一)日本人カ起訴スル場合ニハ訴訟ノ進行ニ關シ成ルヘク便宜ヲ與フヘキコト(第二)當然ノ被害ニ對シテハ補償ノ方法ヲ講スヘキコト(第三)日本人ノ所有地ニシテ本法適用ノ爲價格ヲ減少スルモノアルヘキヲ慮リ所有者ノ申請ニ應シ本法制定前ニ於ケル市價ヲ以テ該土地ヲ政府ニ買收スヘキ方法ヲ設クヘシトノ三

明言セサルモ自ラ加州新法ノ曲直ヲ法廷ニ爭ハントスルノ意向ヲ示ササリシノミナラス何等本問題ニ關スル解決案ヲ提示スルコトナカリキ

前顯米國政府ノ回答ハ帝國政府ノ滿足スル能ハサル處ノモノタルヤ勿論ニシテ政府ハ本件條約違反ノ點ヲ是正スルハ米國政府ノ義務ト認メタルヲ以テ六月四日政府ハ珍田大使ヲシテ右ニ對スル辯駁トシテ第二回抗議（別添第四號）ヲ國務長官ニ提出セシメ更ニ條約違反ノ點ヲ指摘細論シテ米國政府ノ注意ヲ喚起セシメタルカ國務長官ハ右抗議書ヲ受領セル際尙本件ニ對シ充分ノ考査ヲ加フヘキ旨竝ニ本件ハ決シテ人種的僻見ニ出テタルモノニアラスシテ純然タル經濟問題ナリトノ趣ヲ繰返ヘセリ

此時ニ當リ帝國政府ハ日米兩國國交ノ大局ニ關シ米國大統領ニ對シ我衷心ヲ披瀝シ親シク其愼重ナル考量ヲ促スヲ以テ本件ノ解法上有利ナルヘキヲ思ヒ別ニ覺書ヲ作成シ珍田大使ヲシテ六月五日大統領ニ謁見ノ上右ノ趣旨ヲ述ヘ同時ニ第二回抗議ノ內容ニツキ詳述セシメ日本ハ本件ヲ以テ國家ノ面目威嚴ニ關スル重要問題ト認ムル旨ヲ縷說セシメタリ右覺書ハ別添第五號ノ通日米兩國ハ其地理的關係上永久相隣ノ關係ニアルノ運命ヲ有シ居リ兩國國民カ將來經濟的竝ニ社會的ニ益〻相接觸スヘキハ必至ノ勢ニシテ之ニ對シテハ交讓和協以テ永ク善隣ノ好誼ヲ全ウスルコト相互ノ幸福ナルヘク從テ互ニ他ヲ遇スルニ公明正大苟モ其威信ヲ傷ケ感情ヲ害スルカ

國務長官ハ豫テ準備セル我抗議ニ對スル回答書ヲ珍田大使ニ手交シタリ右回答ノ內容ハ別添第三號ニヨリテ知悉シ得ヘキモ其要領ヲ摘記スレハ先ツ該法ノ尙加州議會繫屬中米國政府ハ之カ防止ノ爲全力ヲ傾注セルノ事實ヲ擧ケ同法ノ成立ヲ遺憾トスルノ意ヲ表シ轉シテ該立法タル何等政治的意味ヲ有スルニアラスシテ全然經濟的ノ必要ニ出テタルモノナルヲ切言シ我抗議書ニ於テ該法ノ規定ヲ以テ日米通商條約ニ違反セルモノトナスモ該法ノ意思カ條約上ノ權利ヲ尊重シ之ヲ支持スルニ存スルハ法文ノ明示スル處ニシテ若シ該法實施ノ結果條約違反ノ事實アリトセハ被害日本人ハ直ニ合衆國裁判所ニ出訴シ其權利ノ擁護ヲ請求シ得ヘキヲ述ヘ尙我提起セル他ノ諸點ニ對シ夫々辯明ヲ加ヘ結論トシテ彼我兩國間ノ强固不變ナル好情ハ斯ル一種ノ財產ニ對スル一州ノ經濟政策ニヨリ左右セラルルモノニ非ルヲ信スル旨附言セルモノナリ

米國政府ハ當初本件ノ加州議會ニ繫屬中ニアリテハ之カ成立ヲ阻止スルタメ旣述ノ如ク諸種ノ手段ヲ採リ遂ニ國務長官ヲ加州ニ簡派スル迄ニ至リタルハ明ニ帝國政府ノ立場ヲ諒トシ加州ノ行爲ヲ以テ國際上重大ナル影響ヲ惹起スヘキモノトシ之ヲ抑制セントスルニ出テタル事勿論ナルノミナラス我珍田大使カ屢次國務長官ト面談ノ際交換セル問答ノ行掛リニ照スモ本法成立ノ上ハ米國政府ハ之カ效力ヲ消滅セシメンカ爲自ラ進ンテ適當ノ措置ニ出ツヘキハ自然ノ順序ナリト思考セラレタルニ拘ラス米國政府ノ回答ハ前述ノ如ク敢テ本法ヲ以テ條約違反ニ非ストハ

法カ其本質ニ於テ不當且差別的ニシテ正義公道ノ大本ニ悖戻スルノミナラス日米現行通商條約ノ規定ニ牴觸シ且兩國條約關係ノ基礎タル修好親善ノ精神及本義ト背馳スルモノタルヲ痛論シ條約ノ明文ニ牴觸スル點ニ關シテハ本邦人カ從來適法ニ取得シタル土地ノ所有權ヲ其正當相續人ニ移轉スルノ權利ヲ奪フノ點ヲ始メトシ其他數種ノ事項ニ亙リ精細ニ本立法ノ不當ヲ論詰シ終ニ米國政府カ從來日本政府ニ對シテ與ヘタル懇篤ニシテ且同情アル友交親善ノ表彰ニ顧ミ今次ノ問題モ亦兩隣邦間ニ存スル歷史的親交關係ニ適合スヘキ解決ヲ見ンコトヲ期待スル旨說述シタルモノナリ

國務長官ハ我抗議ニ接シタル後五月十一日ニ至リ大統領ノ命ニヨリ加州知事ニ電報ヲ發シ日本政府ヨリ熱烈ナル抗議ノ提出アリタルヲ告ケ大統領ハ內國人ト在住東洋人間不調ノ原因ヲ除去スルノ必要ヲ充分感知スルヲ以テ姑ク假スニ時日ヲ以テスルニ於テハ外交的折衝ニヨリ加州ニ於ケル外國人土地所有問題ヲ處理スル爲進ンテ斡旋ノ勞ヲ執ルヲ辭セストノ意ヲ致シ以テ知事ヲ反省セシメ一先ツ同法案裁可ヲ中止セシメント試ミタル趣ナルカ右ニ對シ知事ハ五月十四日返電ヲ發シテ本法制定ノ必要ト條約違反ニアラサル旨ヲ縷說シ假ニ同法カ條約違反又ハ區別的立法タリトスルモ其俑ヲ作リタルハ中央政府ヲ始メ他ノ數州ニ在リトシ極力同法ヲ辯護シ結局之ヲ裁可スルノ意思ヲ公表シ次テ十九日ニ至リ遂ニ署名裁可ヲ了スルニ至レリ此報ニ接スルヤ

ミナラス事實ニ於テ日本人ニ對シ劣等ナル區別的待遇ヲ與フルモノニシテ條約ノ主義精神ニ悖ルモノナル旨ヲ繰返シテ我主張ノ徹底ニ努メ法文ノ字句如何ニ拘ラス事實上日本人ニ區別的待遇ヲ與フルカ如キ立法ヲ見ルナカラン事ヲ要望シタルカ不幸ニシテ中央政府ノ勤告ハ毫モ加州議會ノ顧ル處トナラス形勢益〻急ヲ告クルニ至ルヤ大統領ハ加州當局者ト直接協議ノ必要ヲ認メ加州知事及議會ノ同意ヲ得テ國務長官ヲ同州ニ急派スルニ決シタル趣ニテ同長官ハ四月二十八日加州首都ニ着シ兩院協議會ニ臨ミ親シク中央政府ノ希望ヲ陳ヘ種々調停的提議ヲナシ極力立法ノ緩和ニ斡旋スル處アリタル趣ナルモ知事及其一派ノ議員ハ固ク州權不干涉說ヲ持シ國務長官ノ所言ニ耳ヲ藉ササリシカ如キノミナラス却テ排日的色彩ノ最モ鮮明ナル「ウエッブ」案ヲ通過確定スルニ至リタルハ前章記述セルカ如シ

第三　土地法ニ對スル我抗議及米國政府ノ辯明

土地法カ加州兩院ヲ通過シ知事ハ未タ裁可ヲ與ヘスト雖最早殆ト成立ニ疑ノ餘地ヲ存セサルニ至リタルヲ以テ帝國政府ハ米國政府ニ對シ該立法ニ關シ正式ニ抗議ヲ提起スルノ必要ヲ認ムルニ至リ遂ニ五月十日ヲ以テ珍田大使ヲシテ我第一回抗議書ヲ國務長官ニ手交セシメタリ該抗議書ノ內容ハ別添第二號ニ就キ之ヲ知悉スルヲ得ヘキモ試ニ其要點ヲ擧クレハ先ッ該土地

有地積ノ如キ極メテ微少ニシテ何等嫌畏スヘキ事由ナキニ拘ラス不公平ナル立法ニ依リ本邦人ノ正當ナル權利ヲ侵害シ其發達ヲ阻止セントスルハ帝國政府ノ了解ニ苦ム所ニシテ爲ニ日米ノ國交及通商上ニ悲ムヘキ影響ヲ招來スルコトアルヘク帝國政府ハ國家トシテノ面目上極メテ本件ヲ重視スルモノナル旨反覆說述シ本法案防止ノ爲中央政府ニ於テ一層ノ努力ヲ用ヒン事ヲ要望スル所アリシカ大統領及國務長官ハ何レモ深ク我カ意ヲ諒トシ該土地法案ノ必シモ正義ニ適セサルヲ認ムルモ土地所有權ノ許否カ州ニ專屬スルノ事實ハ中央政府ト加州當局者ト政派ヲ異ニスル事情ト相俟テ當面ノ解決ヲ困難ナラシムルモノアルヲ辯疏シ尙我主張ニ對シテハ充分同情ヲ以テ考量シ之カ友好的解決ノ爲全力ヲ盡スヘキ決心ナルヲ以テ此態度ハ宜シク日本政府ニ徹底スル樣取計ハレタキ旨言明スル所アリタリ

聞ク所ニ據レハ四月十八日大統領ハ國務長官ヲシテ加州知事ニ電照セシメ大統領ニ於テ加州立法權ノ獨立ヲ充分ニ尊重スルハ勿論ナルモ東洋ニ於ケル友邦トノ親交ニ鑑ミ法案ヲ變更シ歸化權ノ有無ヲ以テ本件權利ノ標準トナササランコトヲ勸告シ其後同月二十二日五月一日ノ兩度大統領ヨリ直接知事ニ電報シ同月十一日更ニ國務長官ヲシテ電照セシムル所アリ知事亦之ニ對シテ一々返電ヲ發シ自己ノ立場ヲ辯護スル所アリタルモノノ如ク珍田大使モ亦爾來屢次國務長官ト會見シ本法案ハ明カニ日本人ノ排斥ヲ目的トシタルモノニシテ只ニ條約ノ明文ニ違反スルノ

期待ニ副フ爲ニ斡旋スルヲ辭セスト明言シ續テ三月十三日大使ハ更ニ國務長官「ブライアン」氏ニ面會ノ結果右同樣ノ言明ヲ得タリ

加州方面ニ於テハ我領事ハ當初ヨリ帝國政府ノ訓令ヲ奉シテ必要ノ行動ヲ執リ桑港博覽會會社ハ徹頭徹尾本立法ニ反對シ之カ防止ニ全力ヲ傾注シタルノミナラス商業會議所其他ノ有力ナル團體ニシテ排日的立法ニ反對スルノ決議ヲナシタルモノ少カラス又新聞紙中ニモ同樣ノ意見ヲ發表セルモノ多ク州議會前半ノ會期ニ於テハ（昨年ノ加州議會ハ一月六日開會二日四日一旦休會シ三月十日再開五月十二日ニ至リテ閉會セリ）形勢ノ歸趨容易ニ逆睹シ難キモノアリシモ其後半ノ會期ニ至リ院內ニ於ケル排日派議員ノ活動漸次旺盛ノ狀ヲ呈シ形勢急轉シテ前述ノ如ク上下兩院均シク代表案ヲ作成シ各代表案ハ上院ニ於テハ四月十二日第二讀會ヲ通過シ下院ニ於テハ四月十五日第三讀會ヲ通過スルニ至レリ

形勢ノ推移前述ノ如ク事態漸ク重大ヲ告クルニ至リタルヲ以テ珍田大使ハ帝國政府ノ訓令ニヨリ四月十二日國務長官ト會見シ更ニ四月十五日大統領ニ謁見シ孰レモ談ヲ日米兩國ノ傳統的親善關係ニ起シ帝國政府カ多年兩國ノ親交ヲ維持增進スルヲ念トセルノ事實ヲ述ヘ例ヲ移民制限又ハ桑港博覽會率先參同等ニ採リ常ニ其誠意ヲ表示スルニ躊躇セサリシ事實ヲ縷說シ進テ加州ニ於ケル本邦人ノ發展ハ決シテ世上傳唱セラルルカ如キ顯著ノ進境ヲ呈セルモノニアラス其所

國間交涉ノ主題トナリタルモ專ラ此區別的待遇ノ點ニアリトス

第二一　本法成立ノ經過及成立前帝國政府ノ執リタル措置

帝國政府ハ加州第四十議會開會ノ當初尙米國政府ノ首長タリシ「タフト」氏並ニ國務長官「ノツクス」氏ニ對シ前年來ノ事例ニ依リ排日立法ノ成立ヲ阻止スル爲充分有效ナル處置ヲ採ラレン事ヲ要望シ其欣諾ヲ得シモ「タフト」氏ノ政府ハ時恰モ其末葉ニ際シタルヲ以テ何等積極的措置ヲ採ルニ至ラスシテ「ウヰルソン」氏ノ政府ト交迭スルニ至リシカ當時加州ニ於ケル形勢ハ固ヨリ樂觀ヲ許ササリシヲ以テ帝國政府ハ本件ニ關シ米國新政府ノ切實ナル注意ヲ喚起スルノ必要ヲ認メ「ウ」氏大統領就職後劈頭ノ機會昨年三月五日ニ於テ珍田大使ヲシテ同大統領ニ謁見セシメ日本ハ米國ニ對シ終始友好親善ノ誠意ヲ表彰シテ渝ルコトナキニ拘ラス太平洋沿岸殊ニ加州議會ニ於テ現下幾多排日的法案ノ繫屬スルアルハ帝國政府ノ深ク遺憾トスル所ニシテ萬一是等法案ニシテ成立スルカ如キ事アラハ其影響ノ重大ナル洵ニ塞心ニ堪エサルヲ以テ新行政部ニ於テモ從來ノ行政部ト同シク兩國ノ親交ニ顧ミ適當ノ手段ヲ盡シ右等諸法案ノ成立ヲ防止スルニ努力セラレン事ヲ切望スル旨縷述セシメタルニ大統領ハ大使ノ所言ヲ謝シ米國ノ國體上中央政府ハ各州固有ノ權利ニ干涉スルヲ得サルモ中央政府トシテ及フ限リノ勢力ヲ利用シ帝國政府ノ

モ亦同シ

(三) 本法ニ違反シテ取得シタル不動産又ハ之ニ關スル權利ハ州ニ沒收セラル

(四) 第二項ニ該當スル外國人又ハ外國法人ト雖三箇年ヲ超エサル期間農業用ノ目的ヲ以テ土地ヲ賃借スルコトヲ得

然ルニ合衆國國法上本邦人ハ同國ニ歸化スルノ權能ナシト認メラルルノミナラス日米條約ハ土地ノ所有ニ關シ特ニ規定スルトコロナク僅ニ住居及商業等ノ目的ノ爲土地ノ賃借家屋ノ所有及賃借ニ關シ規定アルノミニシテ農業ノ目的ノ爲ニハ土地ノ賃借ニツイテモ何等ノ規定ナキヲ以テ結局本法ハ日本人ニ對シ他ノ外國人ニ比シテ劣等ナル區別待遇ヲ與ヘ僅ニ條約ニ明文ノ保障ナキ農業用地ノ短期賃借權ヲ容認シタルノ外將來全然土地及之ニ關スル權利ノ取得、所有及相續ヲ禁スルモノナリトス而シテ本法ヲ以テ當初ノ下院代表案ニ比スルニ本邦人ニ對シ不動產所有ヲ禁止セントスルノ主旨ハ兩者其軌ヲ一ニスルモ下院案ニ於テハ一般外國人ト雖歸化ノ意思ヲ有效ニ表示セサル限リ本邦人ト同樣ノ地位ニ置カレ殊ニ賃借權ニ關シテハ日本人ト外國人間ニ何等ノ區別ヲ存セサリシモ本法ニ於テハ合衆國國法上本邦人ニ歸化ノ權能ナシトノ解釋ヲ利用シ露骨ニ日本人タル字句ヲ用ヒスシテ一般外國人ヲ歸化ノ能否ニ依リ截然二種ニ區別シ以テ事實上當初ノ諸議案ニ比シ一層顯著ニ本邦人ヲ區別的待遇ノ標的トナシタルモノニシテ日米兩

トキハ此限ニアラス(三)外國人ニ對スル五箇年以上ニ亙ル不動産賃貸契約ハ無效トス(四)歸化權ナキ外國人ヲ過半數株主トスル會社ハ外國人ト看做スト云フニアリテ該案ハ同年四月十五日下院ヲ通過セリ而シテ上院ニ於ケル代表案ハ右ノ內(一)ノ但書ヲ存セス(三)ノ五箇年ヲ三箇年トセル外大體同樣ニシテ同月十二日第二讀會ヲ通過セシモ其後論議百出形勢變轉シ屢〻修正ヲ加ヘラレタル末終ニ加州檢事總長ウエッブ氏ノ起草セル新法案ヲ上院代表案ノ修正トシテ採用スルニ決シ同案ハ上院ニ於テハ五月二日下院ニ於テハ翌三日何レモ大多數ヲ以テ通過シ五月十九日知事ノ署名ヲ了シタルヲ以テ加州憲法ノ規定ニヨリ該法ハ議會閉會後則チ五月十二日ヨリ九十日間ヲ經過シタル八月十日ヨリ實施セラルルニ至レリ該土地法ノ內容ハ別添第一號ノ如シト雖試ニ其規定ノ要點ヲ擧クレハ左ノ如シ

(一) 合衆國國法ニ依リ合衆國市民タルヲ得ル外國人ハ市民ト同樣ニ不動產及之ニ關スル權利ヲ取得、保有、使用、讓渡、遺贈及相續スルコトヲ得

(二) 合衆國國法ニ依リ合衆國市民タルヲ得サル外國人ハ該外國人ノ本國ト合衆國間ニ締結セラレタル條約規定ノ範圍內ニ於テノミ不動產及之ニ關スル權利ヲ取得、保有、使用及讓渡スルコトヲ得

會員ノ多數カ此種外國人タル團體又ハ株式ノ過半カ此種外國人ノ所有ニ係ル會社ニ關シテ

加州問題ニ關スル日米交渉顛末

（大正三年六月二十六日）

第一　土地法ノ性質

過去十數年間加州議會ニ於テハ毎期必ス排日的議案ノ提出ヲ見サルナク米國政府ノ熱心ナル調停ト帝國官民ノ機宜ノ施措ト相須テ從來幸ニ事ナキヲ得タリシモ大正二年ニ至リ遂ニ土地法ノ形式ニ於テ排日的議案成立シ爲ニ彼我兩國政府間ニ重要ナル交涉問題ヲ惹起スルニ至レリ依テ茲ニ本件ニ關スル經過ヲ敍述スルニ當リ先ツ該土地法ノ性質ニ就キ略言セント欲ス客年一月ヲ以テ開會セル加州第四十議會ニ提出セラレタル幾多議案中本邦人ニ取リ最モ重大ナル關係ヲ有シタルハ日本人ノ不動產所有禁止ヲ目的トセル數種ノ法案ナリトス該諸案ハ成規ニ依リ上下兩院共一旦各其委員會ノ審查ニ附セラレ同委員會ニ於テ各代表案ヲ作成セラレタリ先ツ下院代表案ノ要點ヲ擧クレハ（一）一般外國人ノ不動產所有ヲ禁ス但シ現所有者及其妻子ノ手ニ在ル間ハ本法ヲ適用セス（二）將來不動產ヲ取得シタル一般外國人ニハ一箇年間ニ限リ之カ所有ヲ許シ之ニ違反スルトキハ該不動產ヲ公賣ニ附ス但シ所有者カ右一箇年以內ニ歸化ノ意思ヲ表示シタル

Date Due

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