JAPAN'S FIFTY-FOUR CASES

BY

SHUHSI HSÜ, PH. D.
Professor of Political Science and
Dean of College of Public Affairs
Yenching University

ISSUED BY
THE CHINA SOCIETY OF AMERICA, INC.
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FOREWORD

The China Society reprints this summary of "Japan's Fifty-Four Cases" written by Dr. Shuhsi Hsü of Yenching University, Peiping, China, as an aid to the understanding of the present situation in China.
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The following pages contain an examination of the fifty-four cases given out by the Japanese as pending against China. The author does not pretend to achieve the disinterestedness of an inhabitant of Mars in undertaking the task: he would be equally inhuman, if he could be equally detached. But every effort has been made to get the basic facts which are essential to a thorough consideration of the larger issues of treaty law. In this effort he is deeply indebted to the cooperation of a number of friends from Manchuria including several professors of the Northeastern University and ex-directors of railways or government departments.

An examination reveals that in most of the cases the Japanese are unable to make a *prima facie* case against China, and in fact only succeed in showing how Japanese aggression is at work in a normal time, and what the Japanese can contribute toward their national aggrandisement as individuals. Perhaps the only cases that may merit attention are those that arise from the difference in attitude between the two countries with regard to the status of the treaties concluded under the Twenty-one Demands and of the loans and loan agreements generally known after their promoter, the notorious Nishihara. But cases of this kind are suitable for submission to international adjudication, and could have been so disposed of in view of China's known readiness to have recourse to that method of settlement. One cannot understand why the Japanese chose the course of September 18th.

In the present examination use is made of both the Chinese translation of the list of cases that appeared in the *Chen Pao* of Peiping between October 31st and November 2nd and the list given out in English by the Japanese Consulate-General in Shanghai as published on the *Shanghai Evening Post and Mercury* of November 3rd. Of the two the Peiping version is, however, taken as standard, for although the Shanghai consulate shows better judgment in leaving out a few of the glaringly trivial, the Chinese translation is evidently more faithful to the original, being comparatively free from obvious errors.
GROUP I.—CASES RELATING TO RAILWAYS

No. 1. Alleged violation of an understanding in the construction of the Tahushan-Tungliao and Peishanchengtze-Hsian Railways. The understanding referred to is one recorded in the minutes of the Peking Conference of 1905. It reads as follows:

The Government of China, for the purpose of protecting the interest of the Chinese Eastern Railway [i.e., the section of the Chinese Eastern Railway south of Changchun then under consideration] consent that prior to the recovery of the said railway they will not construct in its neighborhood parallel trunk line, and branch line that is prejudicial to its interests.

In this understanding the Chinese Plenipotentiaries consent on behalf of the Chinese government that the latter will not construct in the “neighborhood” of the South Manchuria Railway “parallel trunk line, and branch line that is prejudicial to its interest.” The question seems to be whether such a line as the Tahushan-Tungliao Railway is in the “neighborhood” of the South Manchuria Railway, and, if it is, whether it is a “parallel trunk line,” or “branch line that is prejudicial to its interest.” What then is the meaning of the term “neighborhood?”

The minutes of the Peking Conference do not record the discussion on the understanding and, so far as those documents are concerned, we are left in the dark as to the meaning of the term “neighborhood.” But if we turn to the correspondence between China and Japan over the Hsinmin-Faku project, when the understanding was first invoked, enough light will be shed on the question. One of the notes is of special importance. It is addressed by the Chinese Foreign Office to the Japanese Legation at Peking. It denied strongly that the projected railway was one contemplated by the understanding for, it pointed out, its distance from the

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*a* The grouping is the author’s.

*b* The numbering is based upon the Peking version.

*c* The minutes have been kept secret by the Chinese Government at the request of the Japanese until now in spite of the fact that portions of them were revealed to third parties by the Japanese under the title of "secret protocols" shortly after the Conference was over. The Japanese statement that secrecy was maintained "in deference to the desire of the Chinese government" which appears in MacMurray, Vol. I, Page 554, is contrary to the fact.

*d* The translation is the author’s.
South Manchuria Railway was not less than usually regarded as proper in Europe and America. It then went on to say:

Your Excellency refers to the minutes of the Sino-Japanese Conference, and declares that the Chinese government has disregarded her engagement and taken action prejudicial to the interest of the South Manchurian Railway. Probably your Excellency is not aware of the fact that at the time the plenipotentiaries of China and Japan discussed the matter the plenipotentiaries of China maintained that the word "parallel" was too comprehensive and that it was necessary to give distance in miles, stating definitely that within so many miles no parallel line could be constructed. The Japanese plenipotentiaries, however, thought that if the number of miles were fixed, it might create the impression in other countries that there was an intention to restrict Chinese railway enterprise. The Chinese plenipotentiaries then asked that the number of miles between the parallel lines be fixed in accordance with the practice of Europe and America. The Japanese plenipotentiaries said the practice was not uniform and that no statement was necessary. And they added a declaration that Japan would do nothing to prevent China from any steps she might take in the future for the development of Manchuria. The declaration was made in all sincerity and with consideration for the interests of a friendly nation. This is what we both ought to observe.\[a\]

At this point the Chinese note passed on to point out at great length that, quite contrary to Japanese apprehension, the line when opened would tend to increase the traffic of the South Manchuria Railway, since commerce served by such a line would naturally take the route to Dairen, as Tientsin and Yingkow were ice-bound ports.

Another note of equal importance is addressed by the Japanese Legation to the Chinese Foreign Office. It reads:

Precedents of special concession made by the Chinese government may be found in the agreement of 1898 between the Russo-Chinese Bank and Chinese officials concerning the Chengting-Taiyuan Railway and the agreement of the same year between the Peking Syndicate and Shansi officials prohibiting the construction of competing lines within one hundred \(\text{li}\) on both sides of the Chengting-Taiyuan Railway. The idea is that one hundred \(\text{li}\) is a competing area in which no construction of other lines should be permitted. It is evident that the Chinese government cannot con-

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\[a\] Translation made by the author in *China and Her Political Entity*, Page 295. Original text may be found in *Tung san sheng cheng lüeh*, Administrative Records of the Three Eastern Provinces, Vol. XI, Page 46, left front.
stantly cite the practice of Europe and America as the basis of argument.\textsuperscript{a}

Several points stand out clearly in the foregoing documents: First, in spite of Chinese efforts, no definition was reached in the Peking Conference because the Japanese preferred to give a general assurance instead. Second, when it came to the application in a specific case, the Japanese found the general assurance too much in their way and voluntarily cited some definite precedent. Third, the precedent thus cited gave 100 \textit{li}, \textit{i.e.}, 30 miles on both sides of the railway as the area. The first and second points of course only throw light on the question at issue; but the third actually supplies us with the meaning that we have sought.

According, then, to the Japanese the “neighborhood” in the understanding means 30 miles on either side of the main line of the South Manchuria Railway. And this interpretation ought to be fair enough to them whatever it may be to the Chinese. This is so especially in view of the assurance they gave in the Peking Conference; and of their engagement to the same effect made in Article IV of the Portsmouth Treaty over which the Peking Conference was held. It may also be added that the Japanese seem to have acted upon this interpretation until they come to the Tahushan-Tungliao case. When the Chinchow-Aigun project was mooted, Japan did raise objection, but not on the basis that the line was in the “neighborhood” of the South Manchuria Railway. When the Mukden-Hailung line was built, she did not even raise objection.

By the foregoing examination of the case it is evident that the Japanese claim that in constructing the Tahushan-Tungliao Railway China violates an understanding, is entirely groundless. By rail, Tahushan is 85\(\frac{1}{3}\) miles from Mukden, and Tungliao, 126 miles from Ssupingkai. In the former case the distance is more than twice and a half 100 \textit{li}; in the latter case, more than four times. Even if China should officially accept the Japanese interpretation of the term “neighborhood,” that railway would not be within it.

As to the Peishanchengtze-Hsian Railway, the case can be more easily disposed of. Even if for the sake of argument we should grant that the line is in the “neighborhood” of the South Man-

\textsuperscript{a} From copy of an unpublished document in the author’s possession.
churia Railway, the Japanese position would be just as untenable. The line is built for the transportation of coal from Hsian and by its nature does not come into competition with the South Manchuria Railway. It is a "branch line that is" not "prejudicial to its interest."

No. 2. Alleged disregard of the agreement concerning the extension of the Peking-Mukden Railway.

In the Japanese complaint the particular provision in the agreement referred to is specified as Article VI, which translated from the Chinese original, reads as follows:

Trains of the Peking-Mukden Railway arriving at Mukden which make connections with the South Manchuria Railway (for instance, through express trains) shall pass through the Mukden Station of the South Manchuria Railway to the City Wall Station via the connecting line. Trains leaving the City Wall Station which make connections with the South Manchuria Railway shall also pass through the Mukden Station of the South Manchuria Railway via the connecting line. This does not apply to special trains, freight trains and trains which do not need to make connections with the South Manchuria Railway.\(^a\)

The authorities of the Peking-Mukden Railway suspect that the complaint is directed against the through express trains which have been operated recently between Peiping and Kirin, as these, unlike those that run between Peiping and Mukden, are not routed to pass through the Mukden Station of the South Manchuria Railway. The question is then: can the Japanese position be justified on the basis claimed by them?

The trains that are to pass through the Japanese station are given in the article specified by the Japanese as trains arriving at Mukden or leaving it which "make connections with the South Manchuria Railway (for instance, through express trains)." As to which are the trains that "make connections with the South Manchuria Railway," nothing express is said. The phrase, "for instance, through express trains," which appears within brackets after the quoted sentence is no clearer itself, and therefore throws

\(^a\) It will be interesting to compare the current translation in MacMurray (Vol. I, Page 785) with this translation, especially the clause within brackets and the last sentence of the article. For the Chinese text see Yo chang lu yao, Collection of the More Important Treaties, Vol. I, Page 294.
no additional light on the question. It will be necessary to go beyond the specified article itself to find out its meaning.

Two sections in the agreement are pertinent. One is Article II which reads:

The Chinese government agrees to order the Peking-Mukden Railway Administration to build a direct connecting line between the City Wall Station of the Peking-Mukden Railway and the Mukden Station of the South Manchuria Railway to facilitate transportation.\(^a\)

The other pertinent section is the preamble which states that the agreement, which, by the way, is dated September 2, 1911, is negotiated in pursuance of Article V of the agreement of September 4, 1909, in which a number of questions relating to mines and railways in Manchuria are settled. The article of the agreement of 1909 reads:

The Government of Japan declares that it has no objection to the extension of the Peking-Mukden Railway to the city wall of Mukden. Practical measures for such extension shall be adjusted and determined by the local Japanese and Chinese authorities and technical experts.\(^b\)

From the foregoing examination it becomes clear that the statement in Article VI of the 1911 agreement regarding the trains that “make connections with the South Manchuria Railway (for instance, through express trains)” is simply a reference to what in general would naturally follow as a result of the building of a direct connecting line between the Chinese city wall station and the Japanese station, and not an embodiment of an engagement on the part of China to bind herself to the particular course of action which the Japanese desire. The “local * * * Chinese authorities and technical experts” that negotiated the 1911 agreement could only adjust and determine “practical measures” incidental to the extension of the Peking-Mukden Railway to the city wall of Mukden. Within their power they did agree to the building of a direct connecting line between the Chinese and Japanese stations “to facilitate transportation.” They further agreed to run such trains as make connections with the South Manchuria Railway through the Japanese station first. But they could not, without exceeding

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\(^a\) For Chinese text and current English translation see last citation.

\(^b\) MacMurray, Vol. 1, page 971.
their power, have agreed to run all through express trains in the same manner. It is, of course, possible for negotiators to exceed their power honestly or even intentionally; but the text in this case does not indicate that probability.

It may also be pointed out that even if the Japanese interpretation be granted as correct, the claim they make still cannot be sustained. As the agreement of 1911 was concluded with reference to the Peking-Mukden Railway long before the lines east of Mukden were even projected, it could refer only to trains running between Peiping and Mukden, and not to trains running between Peiping and Kirin.

No. 3. Disregard of an agreement in the construction of the Kirin-Hailung Railway.

The agreement referred to was concluded between the Anfu government and the Industrial Bank of Japan on September 28, 1918. It purported to be preliminary in nature, entered into “with the object of concluding a loan contract for the purpose of building four railways in Manchuria,” including one “between Kirin and Kaiyuan by way of Hailung.” In reality it was a means through which the notorious Japanese agent Nishihara supplied one of his loans, in this case 20,000,000 yen, for the war chest of the Anfu Party which was then carrying on military campaigns against the people.

In spite of the provision in Article VIII of the agreement that “a formal loan contract shall be concluded within four months after the conclusion of the present preliminary agreement,” no such step has ever been taken. The Anfu government which lasted well beyond the stipulated period was naturally not enthusiastic about the matter. As to the governments that followed, they were even less ready to see the consummation of the process, for they had the additional consideration that the people were absolutely opposed even to the recognition of the agreement itself.

Nothing, therefore, was done for a number of years. In the meantime the need for the development of the country east of the South Manchuria Railway as well as for a direct connecting line between Mukden and Kirin became daily more evident, and yet it

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\[a\] For current English text see MacMurray, Vol. II, Page 1448.
would be impossible to build the railway on the basis of the preliminary agreement in view not only of popular disapproval, but also of the dead weight of 20,000,000 yen. In the end in June, 1927, eight years and five months after the extinction of the four-month period allowed for the conclusion of a formal agreement, the government of the Three Eastern Provinces decided to build the railway with funds provided by the people and the government themselves. The work was completed in two years.

From the nature of the case it is evident that the Japanese complaint has no justifiable ground. In supplying a loan to the Anfu Party for civil war purposes the Industrial Bank of Japan knew that it was taking sides in an internal struggle and therefore ought to be ready for certain consequences. It would be a very friendly gesture on the part of the Chinese people, if they should allow their government to return the money advanced. But so far as the Industrial Bank is concerned, it has neither a legal, nor a moral, right to expect such a generous act, still less to estop China from building with her own money one of the railways mentioned in the agreement.

No. 4. Disregard of an alleged agreement to construct the Chang-chun-Talai and Tunghua-Hueining Railways.

According to the Japanese the agreement referred to was one entered into between the Ministry of Communications and the South Manchuria Railway on June 25, 1927, one of the last days of the Peking regime under the late Marshal Chang Tso-lin.

Inquiry at the various government offices that might possibly be concerned has revealed that the Chinese government is not in possession of a copy of the alleged document and in fact has, at least officially, no knowledge of the existence of such an agreement.

Some of those who were connected with the Peking government of the time, however, said that some sort of an agreement concerning the two railways under discussion was known to have been signed by a member of the Ministry of Communications with an agent of the South Manchuria Railway. But, they continued, the member of the Ministry, so far as they knew, was not the Minister himself, but a bureau head, and the date of signature was not June 25th as alleged by the Japanese, but June 23rd. The reason the Japanese have alleged the 25th instead of the 23rd is, they think,
because the bureau head received an order to take charge of the affairs of the Ministry on the 24th on account of the absence of the Minister.

It is evident from the foregoing account that perhaps there is some such an agreement as alleged, but that the legal character of this document is of a doubtful standing. Even if the non-official description of the irregularities be ignored, the fact that the document was signed by a minor officer at the last stage in a civil war, when the opposed party had expressly declared to the world that it would not recognize any international agreement entered into by the other party, would be enough to render the document null and void. It is, therefore, difficult to see what legitimate complaint the Japanese can make in the case.

No. 5. Alleged restriction on the rights of the adviser to the Taonan-Anganchi Railway.

This railway was constructed by the South Manchuria Railway on behalf of the Mukden government on funds advanced by the Japanese railway. Article V of the contract providing for the matter reads:

The Director of the railway shall appoint an adviser nominated by B [i. e., the South Manchuria Railway Company] to serve on the railway, the contract of engagement to be drawn up by the Director.

The power of the said adviser shall be regulated separately.

By an exchange of notes on the same day the contract for the construction of the railway was signed, the power of the Japanese adviser is thus regulated:

The adviser shall be in charge of all receipts and disbursements on behalf the railway. He shall sign all bills jointly with the Director, and may within the needs of his function select not more than two Japanese employees as his assistants.

The notes further provide that the adviser will act as the representative of the South Manchuria Railway Company in its relations with the railway.a

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a Copy of this agreement, which is dated September 3, 1924, and accompanying notes are in author's possession.
According to the railway authorities, at the time the first adviser was appointed the South Manchuria Railway Company submitted a request for two assistants for the adviser, one to be in charge of traffic and the other, construction. The railway administration declined to give consideration on account of the fact that the functions thus suggested for the assistants went beyond the original understanding. In the end the South Manchuria Railway Company did not insist upon the request. The railway authorities are at a loss to understand why the rights of the adviser are thus restricted.

As to signing the bills jointly with the Director, the railway authorities declare that no attempt has been made to restrict this. They produce examples of bill blanks in which reservation for the signature of the adviser is clearly indicated as one of the evidences against the charge.

No. 6. Alleged failure to appoint a Japanese chief accountant for the Kirin-Tunghua Railway.

For the construction of the said railway a contract was entered into between the Chinese government and the South Manchuria Railway in 1925. By the terms of this contract the latter was not only to undertake the construction on behalf of the former, but was to advance the necessary expenses. Furthermore, the Chinese Director of the Railway was to appoint a Japanese chief engineer during the period of construction, and a Japanese chief accountant, when the whole railway is in operation until the fund advanced is repaid, in both cases with power to countersign the bills of receipt and disbursement.

In 1928 the work was completed, but on account of its poor quality the Chinese government has not even now taken over the railway in a formal way, although through the Director of the railway it has been in actual control ever since the work began. In consequence of the situation the Japanese chief accountant has never been appointed, but on the other hand, neither has the Japanese chief engineer been discharged.

It seems, therefore, that if the Japanese have any complaint at all, it should be made on the account of the refusal to take over the

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a Copy of text in author's possession.
railway formally rather than of the failure to appoint a chief accountant. This is so especially when the object of the appointment, which is evidently the protection of Japanese interest in the funds advanced, is fully served by the continuation of the chief engineer in service.

No. 7. Disregard of protest against the establishment of connection between the Tahushan-Tunglia and Ssupingkai-Taonan Railways at Tungliao.

The Japanese protest must have been made on the ground that the Tahushan-Tunglia Railway was under protest. If so, this case falls down with the other (No. 1) which has been shown above to be based upon no substantial ground.

As a matter of fact, even if their protest against the construction of the Tahushan-Tunglia Railway had been sound, the Japanese could still have acquiesced at its connection with the Ssupingkai-Taonan Railway, if not for other reasons, for the benefit to be derived by the Ssupingkai-Taonan Railway, which is already insolvent on account of faults for which they are chiefly responsible. But evidently they are more interested in frustrating Chinese railway enterprise than in cooperating with it.


The agreement referred to, according to the Commission on Communications in Manchuria, has never been repudiated. In making the complaint the Japanese evidently have in mind the rejection by the said commission of the proposal to extend the terms of the agreement to cover the Korean Railways submitted by the South Manchuria Railway in 1928. But this, it is clear, is different from what has been alleged.

One can readily see that if the proposal were accepted, the Antung-Mukden line of the South Manchuria Railway would profit by it. But what, then, have the Japanese to offer as a compensation for the loss which the Tahushan-Tunglia Railway will sustain? The consideration of Japanese interest alone has undoubtedly been responsible for many of the troubles in Manchuria.
All goods and materials for the construction, operation and repair of the line, will be exempt from any tax or customs duty and from any internal tax or duty.

It is scarcely necessary to point out that the article referred to only exempts from tax and duty "all goods and materials for the construction, operation and repair of the line," not any amount of goods and material the South Manchuria Railway may purchase, and that therefore the Chinese authorities were fully within their rights in desiring to be assured that the sleepers were actually required for the "construction, operation and repair" of the South Manchuria Railway before issuing permits for tax exemption. The Japanese complaint is evidently not properly grounded.

No. 13. Alleged obstruction to the quarrying of stone for railway purposes.

A number of instances are given by the Japanese which need not be repeated here. According to the Chinese authorities there has not been such obstruction as alleged, and if the Japanese experience difficulty, it is because they do not confine themselves to the rights acquired under treaty. Article VI of the contract of 1896 bearing upon the question states:

The lands in the vicinity of the line necessary for procuring sand, stone, lime, etc., will be turned over to the Company freely, if these lands are the property of the State; if they belong to individuals, they will be turned over to the Company either upon a single payment or upon an annual rental to the proprietors, at current price.

In practically all cases the lands involved belong to individuals, but the Japanese seem to remember only that "they will be turned over" and forget that this is conditional "either upon a single payment or upon an annual rental to the proprietors, at current price." If the Japanese do not want to respect the rights of the Chinese people themselves by paying for what they may take, they must not expect the Chinese government to act in the same manner by compelling the people to comply with Japanese wishes.

No. 14. Alleged obstruction to the exploitation of mines along the Antung-Mukden line.

According to Article IV of the agreement of September 4, 1909, as well as the memorandum referred to in that article the "coal,
iron, tin and lead mines situated near" the Antung-Mukden line are open to joint Sino-Japanese exploitation. The Japanese now complain that in three cases the Chinese authorities have invoked regulations governing mining to obstruct the application of this provision, which regulations, they declare, are contrary to the provisions of Article IX of the Sino-British commercial treaty of 1902 to which Japan is entitled by the provision of most-favored-nation treatment in her own commercial treaty with China.

The article of the Sino-British commercial treaty reads:

The Chinese Government, recognizing that it is advantageous for the country to develop its mineral resources, and that it is desirable to attract foreign as well as Chinese capital to embark in mining enterprises, agree within one year from the signing of this Treaty to initiate and conclude the revision of the existing Mining Regulations. China will, with all expedition and earnestness, go into the whole question of Mining Rules and, selecting from the Rules of Great Britain, India, and other countries, regulations which seem applicable to the condition of China, she will recast her present Mining Rules in such a way as, while promoting the interests of Chinese subjects and not injuring in any way the sovereign rights of China, shall offer no impediment to the attraction of foreign capital or place foreign capitalists at a greater disadvantage than they would be under generally accepted foreign Regulations.

Any mining concession granted after the publication of these new Rules shall be subject to their provisions.

Since the conclusion of the British treaty China has recast her mining regulations more than once and her object has remained the same as stated in the treaty. The latest of her efforts was promulgated on May 26, 1930, a reference to which will be enough to refute the Japanese charge. If the mining regulations run counter to no treaty provisions, their application in the cases cited, though it may not work to favor the Japanese, cannot be considered as a means of obstruction.

It may be added that according to the authorities at Mukden two of the three cases cited concern mines found respectively 120 and 180 li from the nearest point of the Antung-Mukden line, and could not have been considered as being "situated near" that railway.
No. 15. Repudiation of certain purchases of land for the Fushun Mines.

The purchases referred to were made in 1924, but so far the Chinese authorities have refused to recognize them on the ground that, as the land involved is outside the boundaries of the mines agreed to by China, these purchases would virtually amount to an extension of the mining area. The Chinese authorities have evidently acted within the rights of China.

No. 16. Alleged obstruction to the purchase of land by the Railway.

It is stated by the Japanese that beginning with 1929 the Chinese authorities have practised such obstruction, and that there are no less than fifty-nine cases pending as a consequence. The Chinese, on the other hand, strongly denied the charge. They suspect that the Japanese have in mind cases in which the latter do not have a right. Article VI of the contract of 1896 in which the right to purchase land is provided, says:

The lands actually necessary for the construction, operation and protection of the line, as also the lands in the vicinity of the line necessary for procuring sand, stone, lime, etc., will be turned over to the Company freely, if these lands are the property of the State; if they belong to individuals, they will be turned over to the Company either upon a single payment or upon an annual rental to the proprietors, at current prices.

From the foregoing provision it is clear that the right to purchase land is limited to "lands actually necessary for the construction, operation and protection of the line, as also the lands in the vicinity of the line necessary for procuring sand, stone, lime, etc." If the Chinese should refuse to let the Japanese go beyond the limits, they could not very well be accused of obstruction. The situation which has been created by past Japanese encroachment in this respect is already serious enough. The land that has been acquired for settlement purposes alone amounts to forty square miles and one quarter. If the Chinese authorities should not begin to put a stop to the process, before long South Manchuria would become virtually an extended "railway zone."
GROUP III.—CASES RELATING TO MINING

No. 17. Alleged obstruction to the construction of a railway by the Kungchangling Mines.

Article XI of the contract entered into on December 23, 1918, by the local Chinese authorities with the Japanese consul-general at Mukden for the joint operation of the Kungchangling Mines reads:

For the transportation of the product of the mines the Company plans to build a railway from the place the mines are located to connect with the main line or a branch line of the South Manchuria Railway, details to be regulated by mutual consultation.\(^a\)

The railway contemplated by the contract is therefore one for the "transportation of the product of the mines" only. The company, however, applied last year for permission to construct one which was designed to serve all purposes of an ordinary railway. The Chinese authorities naturally considered this as an attempt to extend the South Manchuria Railway system and declined to grant the permission. Such an act cannot be designated as "obstruction."

No. 18. Alleged revocation of permit to purchase clay at Fuchow.

It is stated by the Japanese that the permit granted by the Chinese authorities to a collateral company of the South Manchuria Railway for the purchase of clay at Fuchow was revoked without proper legal procedure. According to the Chinese authorities nothing of the kind has taken place. What has happened is the cancellation of the permit to a certain Chinese for the mining of clay at Fuchow who secretly entered into an agreement with the Japanese company for the sale of clay with provisions that ran counter to mining regulations. The act of the Chinese authorities may be inconvenient to the Japanese company for the time, but is evidently quite different from what is complained of in the case.

No. 19. Alleged confiscation of permit for the mining of certain magnesite and felspar ores.

In this case as in the last the Japanese seem to have confused the issues. They have charged that the Chinese authorities not

\(^a\) Chung jih tiao yao lui tsuan, Collection of Sino-Japanese Treaties, Page 233.
only confiscated the permit issued to a certain Chinese for the mining of certain magnesite and felspar ores, but also compelled the same party to pay a tax for the right lost to them. According to the Chinese authorities the two cases are quite distinct one from the other. The party that was compelled to pay a tax was not the same party that held a permit for the mining of magnesite and felspar ores. Whereas the latter was a Chinese individual, the former was a Sino-Japanese company which happened to have the same Chinese as a member. Furthermore, whereas the Chinese was interested in magnesite and felspar ores, the Sino-Japanese company of which he was a member was a concern for iron-mining.

As to the question of the permit, it is evidently not one of confiscation as alleged. According to the mining regulations a period of two years is allowed for delay in the exploitation of a mine after the permit is issued. But in the case under discussion the party had held the permit for more than ten years without taking any steps for its operation. The Chinese authorities are, therefore, quite justified in cancelling the grant by the recall of the permit.

It is scarcely necessary to add that as the party concerned is a Chinese, the Japanese could have dispensed with the case in listing their complaints.

No. 20. Alleged oppression of the coal mining enterprise at Hsian.

The charge that the Chinese authorities at Hsian oppressed the Sino-Japanese enterprise there by sending police to the mines to interfere with local patronage of the product has been categorically denied. It is stated that what has actually taken place is the refusal of the magistrate of the hsien to compel the inhabitants to sell their lands to the enterprise for the purpose of providing exits for the product to reach the local market.

If the enterprise should make itself so obnoxious to the inhabitants as to prevent them from cooperation, it should either wind itself up or change its policy instead of expecting the magistrate to help it to attain its object by the application of what it could best avoid, force. The latter procedure is certainly inexpedient for the magistrate to follow and harmful to the cause of the enter-

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*See Article XLI of those published on May 26, 1930. A copy of these may be found in *Li fa chuan kan*, Special Issue of Legislation, Vol. III, Page 162.*
prise, not to mention that the party does not have the right to call upon the magistrate to adopt it, nor has the magistrate any duty to comply with the request, if made.

No. 21. Alleged cancellation of lead mining rights at Fengcheng.

According to the local authorities a Chinese who had entered into a partnership with a Japanese was granted the right to mine copper ores at Fengcheng hsien. Later he was found to be mining lead instead, and his right was, therefore, cancelled. His Japanese partner, however, refused to give up the lead mines and protested against the cancellation of the right.

There is no call for a discussion on the question whether it was wise for the local authorities to cancel the mining right in general instead of prohibiting the mining of the ore that was not originally contemplated. So far as lead is concerned, it seems that since no right had ever been granted for it, none could have existed there to be cancelled.

No. 22. Forcible recovery of a stratite mine at Tashihchiao.

This is a case in which a Japanese worked some stratite mine under the names of some Chinese without even taking the trouble to make these Chinese apply for a permit from the authorities. The recovery of the mine by the latter against which the Japanese make the complaint is evidently what their countryman should expect.

It is interesting that this case is left out from the list given out by the Shanghai Japanese consulate-general.

No. 23. Forcible recovery of the lime mines at Penhsihu.

This case is similar to the last. The Japanese involved in it entered into a contract with some Chinese for the mining of lime from their land without making the latter apply for a permit from the authorities. The Japanese evidently have no complaint to make, when the Chinese land owners were punished for the violation of the mining regulations and the Japanese themselves deprived of the mines.
No. 24. Alleged oppression of the Penhsiuh Coal and Iron Mining Company.

As stated by the Japanese this is a case in which the Chinese refused to renew the lease of a reservoir used by the mining company after its expiration on November 1, 1927. In view of the fact that a lessor has no obligation to renew a lease unless specially provided for, it is difficult to see why in exercising his right he can be accused of oppression.

The Japanese seem to think that once they come into contact with something in Manchuria they thereby acquire a claim to it. If they wish to renew the lease, the only way is to make adjustment in compensation for the rise in value through changed circumstances, not by some false charge as that which has been alleged. We are told that in spite of the Chinese refusal to renew the lease on the terms of the Japanese, the latter have not given up the reservoir. If it is a case of oppression, it is the Chinese, rather than the Japanese, who are the victims.

No. 25. Alleged prohibition of the transportation and consumption of Fushun coal.

It is alleged by the Japanese that from about 1929 onward Chinese authorities placed restrictions upon the transportation of Fushun coal by the Mukden-Hailung Railway, and that during 1930 the head of the Department of Agriculture and Mining of the Liaoning province issued orders with the permission of the Northeastern Administrative Commission to institutions under his control to prohibit the use of foreign coal.

The Chinese authorities have denied both charges as entirely unfounded. In their opinion, if the Fushun coal ceases to be in general use along the Mukden-Hailung Railway or by Chinese government institutions, it is partly because the coal mines at Hsian are being exploited, and partly because the Fushun coal itself which is sold in gold yen has risen in price through the fall of silver. They fail to understand why the Japanese must always lay all the blame for any adverse situation they may have to face upon the Chinese.
GROUP IV.—CASES RELATING TO TAXATION


It is stated by the Japanese that the match monopoly established by the Northeastern Provinces is in violation of Article XV of the Sino-American treaty of 1844 to which Japan is entitled through the provision of most-favored-nation treatment in her own treaty with China, and that preferential treatment given to goods of Chinese origin in the matter of railway rates is in violation of Article V of the Nine-Power treaty of Washington.

Article XV of the Sino-American treaty reads:

The former limitation of the trade of Foreign nations to certain persons appointed at Canton by the Government, and commonly called hong merchants, having been abolished, citizens of the United States engaged in the purchase or sale of goods of import or export are admitted to trade with any and all subjects of China without distinction; they shall not be subject to any new limitations nor impeded in their business by monopolies or other injurious restrictions.\(^a\)

The monopoly spoken of in the foregoing article refers to the “limitations of the trade of Foreign nations to certain persons appointed at Canton [or anywhere for the matter] by the Government, and commonly called hong merchants [or by any other name].” It is a term used in opposition to free trade and has nothing to do with a fiscal measure as the one under discussion. It is evidently too far-fetched to quote the article as a basis of complaint.

As to the question of railway rates, Article V of the Washington treaty reads:

China agrees that, throughout the whole of the railways in China, she will not exercise or permit unfair discrimination of any kind. In particular there shall be no discrimination whatever, direct or indirect, in respect of charges, or of facilities on the ground of the nationality of passengers or the countries from which

\(^a\) Customs' Collections, Vol. I, Page 478.
or to which they are proceeding, or the origin or ownership of goods or the country from which or to which they are consigned, or the nationality or ownership of the ship or other means of conveying such passengers or goods before or after their transport on the Chinese Railways.

The Contracting Powers, other than China, assume a corresponding obligation in respect of any of the aforesaid railways over which they or their nationals are in a position to exercise any control in virtue of any concession, special agreement or otherwise.a

In the foregoing article China agrees that, throughout the whole of the railways in China, there shall be no discrimination in respect of charges or of facilities. The question is whether this engagement applies to relations between the Chinese government and all that have recourse to the use of the railways in China, Chinese and foreign alike. The said article as a resolution was adopted in the fifth plenary session of the Washington Conference. At that session the spokesman of the Chinese delegation made the following statement:

I wish, however, to say one or two words in addition to the Declaration that the Chinese Delegation made at the Committee meeting with reference to the question of the open door, and also add a word with reference to the question of Chinese railroads.

China took note of but did not vote on the first Article of the Resolutions on the open door adopted by the Committee on January 18, 1922, defining and declaring acceptance by the Powers of the principle of open door, since the purpose of that Article of the Resolution was to fix the policies of the Powers in their dealings with China or with each other with reference to China. It was not the purpose of that Article to interfere with the appropriate relations between the Chinese Government and its nationals, as was expressly indicated by the Chairman in reply to a question by Sir Auckland Geddes. However, as indicated by the second of the ten Principles or Declarations which the Chinese Delegation had the honor to submit to this Conference on November 16, 1921, the Government of China is glad to give assurance that in the future, as has been constantly done in the past, it will make no discriminations in trade or industry between the Powers having treaty rela-

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a Diplomatic Documents: Washington Conference, 1921-1922 (published by the Waichiaopu), Page 235. 22
tions with China, or between their respective citizens or subjects, because of their nationality.\textsuperscript{a}

From the foregoing statement it is seen that it was the understanding at the Conference that the provision in Article V would not interfere with "the appropriate relations between the Chinese government and its nationals;" and that it was only an assurance to the effect that "in the future, as has been constantly done in the past, it [the Chinese government] will make no discriminations in trade or industry between the Powers having treaty relations with China, or between their respective citizens or subjects, because of their nationality." It is therefore difficult to see how it has anything to do with the question the Japanese have raised.

It may be added that, whatever may be Japan's claim in the case, she could have easily dispensed with it as a complaint against China for the simple reason that according to the new regulations of the Ministry of Railways which had become effective since the month of August, 1931, no difference is made between goods of domestic or foreign origin in the application of the rates.

No. 27. Alleged illegality in the imposition of a business tax in the walled city of Mukden.

It is contended by the Japanese that the walled city of Mukden is a part of the "Mukden" opened under Article X of the Sino-Japanese treaty of commerce of 1903, and therefore the Chinese authorities have no right to impose a business tax there. To this the Chinese authorities have not been able to agree. Article X of the Sino-Japanese treaty as far as it relates to the question under discussion reads:

The Chinese Government agree that, upon the exchange of the Ratifications of this Treaty, Mukden and Tatungkow, both in the province of Shengking, will be opened by China itself as places of international residence and trade. The selection of suitable localities to be set apart for international use and occupation and the regulations for these places set apart for foreign residence and trade shall be agreed upon by the Governments of Japan and China after consultation together.

From the text of the treaty providing for the opening of Mukden it is evident that international trade and residence are confined

\textsuperscript{a} Ibid., Page 20.
to "suitable localities" set apart by mutual agreement of the contracting parties. Shortly after the treaty was signed the section of the town situated between the suburb of the walled city and the South Manchuria Railway area, known since as the "international settlement," was thus selected. If the Japanese should choose to live in the walled city instead, they live there only at the sufferance of the Chinese government, and if they resent the idea of paying a business tax like the rest of the inhabitants, the only alternative is to move to the section specially set aside for them, rather than to interfere with China in the exercise of one of her sovereign rights.

This case is another of those left out from the list given out at Shanghai.

No. 28. Alleged existence of double taxation at Dairen as a result of the abolition of the system of drawback by the Chinese Maritime Customs in re-exportation.

It was the practice of China in the past to grant drawback to goods re-exported from a Chinese port to another Chinese port or to a foreign port, the latter of which included a port temporarily not within her jurisdiction, for instance, Dairen. In doing so she was not bound by any treaty stipulation, but was merely in exercise of her voluntary will. On March 1, 1931, however, she abolished the system in favor of issuing exemption certificates, having found the former system too much attended by abuses. In view of the fact that exemption certificates would be of use only in Chinese ports, all foreign ports including Dairen come to be adversely affected by the act.

One finds it rather difficult to see how the Japanese could have a complaint in the present case. China is not obliged to continue the old system of drawback, nor to maintain the favor flowing out of it. This is particularly so when her own interest is at stake.

At first the Chinese government went on the assumption that the change of the system meant the abolition of the privilege enjoyed by foreign ports in the matter, and on this basis decided not to issue exemption certificate for goods re-exported to Dairen for further transportation to the interior overland, thus producing another point of difference between Japan and China. This point,
however, was later (September 11, 1931) satisfactorily settled by an exchange of notes between the Japanese minister to China and the Chinese Ministry of Finance.

No. 29. Alleged illegality in the increase of export duty on Fushun coal.

From June 1, 1931, the Chinese Maritime Customs collected a duty of 3.4 mace silver on every ton of coal exported by the Fushun mines. The Japanese protested on the ground that the act violated the Detailed Regulations of May 12, 1911, concerning the Fushun and Yentai mines which, they said, were declared to be "effective for sixty years" and subject to extension at the end of the period, if the mines were not exhausted. No. 2 of the regulations reads:

The Company agrees to pay to the Chinese maritime customs for the coal of the two mines exported from a point of maritime navigation an export tax which shall be computed at one-tenth of a Haikwan tael per ton, that is to say, at the rate of one mace silver.

The Chinese Ministry of Finance has denied the charge. According to them No. 2 of the regulations merely explained the agreement of September 4, 1909, Article III of which has the following provision:

The Chinese Government agrees that in the matter of the exportation of coals produced in the said mines, the lowest tariff of export duty for coals of any other mines shall be applied.

They point out that the rate of one mace silver was merely the lowest tariff of export duty for coals at that time.

The stand taken by the Ministry of Foreign Affairs appears to be quite correct. The regulations of 1911 were drawn up in accordance with the following provision which formed part of Article III of the agreement of 1909:

The extent of the said coal mines, as well as all detailed regulations, shall be separately arranged by commissioners specially appointed for that purpose.

It is clear from the agreement providing for the lowest tariff of export duty that the functions of the commissioners to be appointed were only to define the extent of the coal mines as well as to draw up detail regulations and had nothing to do with the
fixing of a permanent rate of duty. It must be remembered that
the latter would mean a restriction upon the sovereign right of a
state. If this had been contemplated, it should have been expressly
stated in the agreement itself.

No. 30. Alleged illegality in the imposition of business and con-
sumption taxes upon the Chinese residents of the South Manchuria
Railway area.

According to the statement of the Japanese these taxes are
being collected by the Chinese authorities outside the railway area
after they were prevented by the Japanese from exercising the
right within it.

The Japanese charge of illegality is based upon their claim that
Japan by treaty has the exclusive right of administration in the
area, including the political. It will, therefore, be necessary to
examine this claim.

As far as we know, the Japanese claim is based upon Article
VI of the contract for the construction and operation of the Chinese
Eastern Railway entered into between the Chinese government and
the Russo-Chinese Bank in 1896. This article reads:

The lands actually necessary for the construction, operation
and protection of the line, as also the lands in the vicinity of the
line necessary for procuring sand, stone, lime, etc., will be turned
over to the Company freely, if these lands are the property of the
State; if they belong to individuals, they will be turned over to the
Company either upon a single payment or upon an annual rental
to the proprietors, at current prices. The lands belonging to the
Company will be exempt from all land taxes (impôt foncier).

The Company will have the absolute and exclusive right of
administration of its lands. (La Société aura le droit absolu et
exclusif de l'administration de ses terrains.)

The Company will have the right to construct on these lands
buildings of all sorts, and likewise to construct and operate the
telegraph necessary for the needs of the line.

The income of the Company, all its receipts and the charges for
the transportation of passengers and merchandise, telegraphs, etc.,
will likewise be exempt from any tax or duty. Exception is made
however, as to mines, for which there will be a special arrange-
ment.
The foregoing is a translation from the French text, found in treaty collections. It may be compared with one from the Chinese, which reads as follows:

The land actually needed by the said company for the construction, operation and protection of the railway, as also the land in the vicinity of the line necessary for procuring sand, stone, lime, etc., if this land is state property, will be turned over by the Chinese Government free of charge; and if it is private property, will be either paid for at one time or rented from the proprietors annually, both at current price. The said company shall itself provide funds for these purposes. The land belonging to the said company will all be exempt from land tax and will be managed exclusively by the said company which will be permitted to construct thereon building and works of various kinds as well as to set up telegraphs, under its own operation, for the exclusive use of the railway. Except in regard to mines for which arrangement will be separately made, the income of the said company, such as the charges for transportation of passengers and merchandise and the receipts from telegrams, will all be exempt from tax or duty.

It is obvious from the text of the article, French or Chinese, that the claim cannot be substantiated. In the French text the "right of administration" spoken of can only refer to such business administration as may be necessary to the "construction, exploitation and protection" of the railway, as no other objects are mentioned. In the Chinese text this point is even clearer. There, indeed, it is only "management" rather than "administration" that is spoken of. As a matter of fact in neither text are settlements ever contemplated. The lands on which the Company is to exercise an "absolute and exclusive right of administration," or "management," read the texts, are "the lands necessary for the construction, operation and protection of the line, as also the lands in the vicinity of the line necessary for procuring sand, stone, lime, etc." for construction purposes, the lands on which "the Company will have the right to construct * * * buildings of all sorts, and likewise to construct and operate the telegraph necessary for the needs of the line," or on which the Company "will be permitted to construct * * * buildings and works of various kinds as well as to set up telegraphs, under its own operation, for the exclusive use of the railway."

This view, it may be added, is not China's alone, but also that of such a third party as the United States. Writing to the Tzarist
government on November 6, 1909, at the time the Russians attempted to organize a settlement at Harbin on the basis of the interpretation since then adopted by Japan, the American Secretary of State says:

The administration by the railway company of its leased lands provided for in Article VI of the contract can refer only to such business administration as may be necessary to the “construction, exploitation and protection” of the railway, these being the objects expressly mentioned in the article for which these lands were granted by China.

This was, without doubt, the understanding of China as evidenced by the Chinese translation of Article VI and by the protest of the Chinese Government against the attempts by the railway company to administer the municipal Government at Harbin.

Adverting to the French text of the contract, it is to be observed that the land which is the subject of the provisions of Article VI thereof is precisely:

“Les terrains réellement nécessaires pour la construction, exploitation et protection de la ligne, ainsi que les terrains aux environs de la ligne, nécessaires pour se procurer des sables, pierres, chaux, etc.”

The second paragraph of Article VI reads:

“La Société sure le droit absolu et exclusif de l’administration de ses terrains.”

As to the meaning of the word “administration,” it seems very worthy of remark that in English the word “administration” is quite commonly used of all sorts of business administration, while the same word in French and the equivalent word in the Chinese version of the contract are still more commonly used of business and non-governmental administration. Indeed the French word “administration” is so very commonly used of business management that its absolute meaning in a given case would be wholly determined by the context.

A reading of the whole contract deprives the second paragraph of Article VI of all semblance of referring to a political administration.\(^a\)

From the foregoing it is evident that the Japanese claim to exclusive right of administration in the area, including the political,\(^a \text{United States Foreign Relations, 1910, Page 219.}

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is unfounded. It is therefore surprising to see that the Japanese not only prevented Chinese authorities from exercising the right of taxation in the area, but have also complained against their exercising it at all with reference to it. As in many other cases the question seems to form a basis of complaint by China against Japan rather than the reverse.

GROUP V.—CASES RELATING TO INDUSTRY

No. 31. Alleged pressure upon the North Manchuria Electric Company at Harbin.

In the Japanese complaint it is stated as follows:

In order to bring pressure to bear upon the North Manchuria Electric Co., which was established in Harbin in 1918, the Harbin municipality made the supply of electricity a concession and established a semi-official company to which was given the concession in disregard of the already acquired privilege of the Japanese company. In May, 1930, the Chinese authorities turned the Harbin Electric Co. into an official enterprise, and are since bringing all possible pressure upon the North Manchuria Electric Co., alleging the same company to be an infringement of the monopoly.

According to the Chinese authorities the statement gives only a part of the truth. The North Manchuria Electric Company began its operation at Harbin by the purchase of a small Russian electric plant, and at the time both the company and the Japanese consulate of the port were notified that the Russian plant did not possess a concession and therefore had none to transfer; that the municipality reserved to itself the right to operate any public utilities; and that if the new Japanese company should desire to proceed with its plan, it should be prepared to wind up its business, should in the future the municipality wish to establish a power house itself for the supply of electricity or to lease the right out to concessionaries. In 1919 the municipal council of Harbin finally decided to exercise its right in the matter. When call was sent out for tenders, three parties, including the North Manchuria Electric Company, responded. On May 15th in the following year the terms of the bidders were announced, and the most favorable, which did not happen to be from the Japanese concern, was declared. On the 25th of the same month the council awarded the concession to the party so declared and called upon the Japanese
concern and all other existing electric plants to wind up their business. The Japanese concern, however, has not complied with the order so far, and now the Japanese authorities have even listed the case as a complaint.

It may be noted that a similar case concerning the South Manchuria Electric Company of Antung is found in the list given out by the Japanese Consulate-General at Shanghai. It is stated as follows:

The South Manchuria Electric Co. has been supplying Chinese citizens with electric light for over twenty years upon an understanding reached between them and the Chinese authorities. In March, 1930, the Municipality of Antung established an electric lighting company for the purpose of competing with the Japanese company.

According to the Chinese authorities the Japanese company has never registered with the Chinese government, nor reached any understanding with any authorities as claimed. They further stated that in establishing an electric lighting company the municipality of Antung merely discharged a perfectly normal function; and that instead of the municipality's bringing pressure upon the South Manchuria Electric Company to compel it to close down, the Japanese had done their worst to interfere with the progress of the work of the Chinese plant by the employment of police force.

No. 32. Alleged illegality in the deal of a tender for railway material.

It is stated in the Japanese complaint as follows:

In a public tender for ten locomotives in August, 1929, the Shen-Hai Railway [Mukden-Hailung Railway] awarded the contract to the Scoda Company in spite of the fact that the lowest offer was made for the same specified material by the South Manchuria Railway Co. and the second lowest by the Mitsubishi Company.

Even as stated by themselves the Japanese have evidently no cause of complaint. An invitation to submit tenders is an invitation to make offers. Unless it is accompanied by the promise to accept the lowest bid, it does not bind the party that issues it to that course.

a As stated in the Shanghai version.
According to the authorities of the Mukden-Hailung Railway, when the tenders came in, it was found that although those made by the two Japanese concerns were the lowest, the locomotives they could offer did not fit in so well with the rest in use on the line, which were generally of European make. In consequence they decided to purchase the same from the Scoda Company. But, they added, in order to avoid misunderstanding, the South Manchuria Railway Company was given the contract for a large order of ordinary passenger cars, for which no tender was called. It seems that with such consideration on the part of the authorities of the Mukden-Hailung Railway the Japanese should have no cause of complaint even from the moral standpoint, still less from the legal.

In the version given in the Chen Pao the act of the Chinese authorities in not awarding the contract to one of the two Japanese concerns was ascribed to the “growing anti-Japanese sentiment.” It is evident that the charge is entirely off the point.

No. 33. Interference with tree felling in the province of Kirin.

The complaint of the Japanese is that by prohibiting the felling of trees along the Kirin-Tunghua Railway in 1930 the Chinese authorities gave “a blow” to the said railway which, the Japanese declare, is built with a Japanese loan, and to the Japanese “exporters of wood.” The Chinese authorities are unable to understand the cause of the complaint inasmuch as the forests and cutters involved are respectively Chinese private property and individuals. They deny that the prohibition in any way affects the interests of the Kirin-Tunghua Railway, which, they add, is also Chinese property. As to the so-called Japanese “exporters of wood,” they are no other than rowdies who have instigated local wood cutters to the felling of other people's trees in order that they may make a profit by exporting the wood. It is difficult to understand why the Japanese should insist upon protecting such illegitimate interests.

No. 34. Alleged failure to perform a forestry agreement.

The agreement referred to relates to the reorganization of the Chamien Company which is engaged in forestry in Hsinanling, Heilungkiang. It was entered into in a provisional way in 1925.
between the provincial government and the South Manchuria Railway. As stated by the local authorities it provides that a new company is to be organized simultaneously with the winding up of the old, with a capital, one half of which is to be contributed by the Chinese in the form of the forestry valued at $2,000,000, and the other half by the Japanese in the form of the camps already erected and cash up to a total value of $2,000,000. According to these authorities, on account of the fact that during the period of winding up the business the Japanese are naturally free to carry on timbering, the latter have used all means to delay the organization of the new company. They express surprise to find that the Japanese have now attempted to lay the blame upon the Chinese instead.

GROUP VI.—CASES RELATING TO TREATIES

No. 35. *Non-performance of the loan agreement of August 2, 1918, and repudiation of the loan itself.*

The loan agreement was concluded between the Anfu government and the Exchange Bank of China in association with the Japanese Banking Syndicate. The sum involved was 30,000,000 yen. The party that arranged it was the notorious Nishihara. The loan was declared to be for "the development of gold mining and forestry in the two provinces of Heilungkiang and Kirin," but in reality made to enable the Anfu Party to carry on its war against the people. For this reason neither the Anfu government itself, nor the succeeding administrations were anxious to carry out the alleged purpose.

This loan, like all the rest of the said Japanese agent's creations, was repudiated by the opposition government at Canton at that time, and has been accorded the same treatment by the Chinese people ever since. In obedience to the popular will the National Government at Nanking has not paid interest on it since its establishment.

From the nature of the case it is evident that the Japanese claims are not well founded. As has been stated in connection with Case 3, in supplying a loan for civil war purposes the Japanese
bankers knew that they were taking sides in an internal struggle and therefore ought to be ready for certain consequences. If the Chinese people should allow their government to return the loan, it would be a very friendly gesture on their part; but the Japanese bankers have no right, either legal or moral, to expect such a generous act, still less to insist upon the carrying out of the alleged purpose of the loan.

No. 36. Repudiation of the advance under the preliminary loan agreement of June 18, 1918.

This advance, amounting to 10,000,000 yen, formed another piece of the work of the notorious Nishihara. The preliminary loan agreement referred to was concluded between the Anfu government and three Japanese banks, ostensibly for a loan to build the Kirin-Hueining Railway, but in reality to enable the Anfu Party to replenish its war chest for campaigns against the people.

According to the terms of the agreement the Anfu government was supposed "with promptness to outline the amount of funds required for the construction of the railway and other items of necessary expenditure" when a formal loan agreement on the basis of the preliminary was to be drawn up. Nothing substantial, however, was done either during the administration of the Anfuites or under the regimes that followed.

The Kirin-Hueining Railway has been one of the lines the Japanese would like to see built. But with a dead weight of 10,000,000 yen saddled upon it, the realization of the wish became remote. So when in 1923 they attempted to persuade the authorities of Manchuria to build the western half or the line, i. e., the Kirin-Tunghua Railway, they offered to treat it independent of the funds advanced.

Like the other Nishihara loans it was repudiated by the opposition government at Canton at the time, and since the establishment of the National Government at Nanking no interest has been paid on it.

Although in the present case it is only the advance made under the preliminary loan agreement that is at issue, the observations made in connection with the last case (No. 35) are applicable.
In their complaint against the repudiation of the advance the Japanese incidentally charge that the Chinese have attempted to avoid constructing the Kirin-Hueining Railway. Whether the Japanese have any legal or moral right to make the charge on the basis of the preliminary loan agreement of June 18, 1918, need not be discussed again in view of what has been said in connection with Cases 3 and 35. Suffice it just to say that China has never acted as charged. It must be remembered that the Kirin-Hueining Railway covers the only route which gives access to the Tumen region which is under the process of absorption by Japan by means of Korean immigrants. The Chinese are as a matter of fact just as anxious to see the completion of the railway as the Japanese, though for a different reason. Shortly after the preliminary loan agreement was concluded a conference was held to discuss the formal agreement, but the Japanese themselves called it off, when they found that they could not secure certain privileges not contemplated by the preliminary agreement. In 1923 when they approached the Chinese concerning the construction of the Kirin-Tunghua section, the latter fell in with them readily. In the last several years, if the Chinese had not taken up their proposal to complete the line, it was simply because not even the account of the construction of the Kirin-Tunghua section was settled, as indicated in Case 9 above.

No. 37. Alleged evasion of contract regarding the purchase of rails for the Kirin-Tunghua Railway.

It is stated by the Japanese that—

China refused to sign a formal contract for about Yen 900,000 which the South Manchuria Railway Company advanced as purchase money for rails in accordance with an agreement with the Ki-tung [Kirin-Tunghua] Railway Administration.

According to the Chinese authorities the charge is entirely unfounded. The facts, they say, are as follows: In 1928 the Japanese Traffic Manager of the Kirin-Changchun Railway urged that the sixty-pound rails of the railway be replaced by the eighty-pound. Arrangement was then made with the South Manchuria

a In accordance with the Shanghai version.
Railway for the purchase of the needed material, with the fund which was estimated at about 900,000 yen, to be advanced by the Japanese company at an interest of 9% per annum. The rails on arrival were unfortunately found to be different from what was specified, being mainly used rails, and the Chinese Director of the Railway naturally refused to accept them. The representative of the South Manchuria Railway on the Administration, however, went ahead independently to use the rails as planned. He also sold the replaced material to the Kirin-Tunghua Railway. The question is not one of evasion of contract; nor has it anything to do with the Kirin-Tunghua Railway.

The Kirin-Changchun Railway has an administration that needs explanation. As a result of one of the Twenty-one Demands the Chinese government of the Yuan regime was made to agree in Article VII of the treaty of 1915 “speedily to make a fundamental revision of the Kirin-Changchun Loan Agreement.” On this basis the Anfuites were induced in 1917 to accept a loan from the South Manchuria Railway Company and in return to “commission” it “to direct the affairs of the Railway” during the term of the loan. The latter arrangement was to be carried out by the Company’s selecting three Japanese as chiefs of the departments of general affairs, traffic and accounting of the Railway, with one of them to act as the Company’s representative. It was, however, stated in the loan agreement that the Chinese government was to appoint a director to “exercise supervisory powers over all the affairs of the Railway;” and that “the orders for all receipts and disbursements of the Railway must be signed in conjunction with” him “before they can be valid;” and that “when the machinery and supplies for the upkeep and traffic requirements of the Railway * * * are purchased, no matter whether they are Chinese or foreign, a statement thereof must be drawn up and first submitted for” his “inspection.”

From the three accounts given above the facts of the case seem to be somewhat as follows: The South Manchuria Railway Company which is commissioned to direct the affairs of the Kirin-Changchun Railway takes advantage of its position to force some used rails upon the latter. The Chinese government which retains the vetoing power in the administration refuses to accept them. The Japanese government then complains that the Chinese have evaded their obligation under a contract!
No. 38. **Alleged refusal by the Peking-Mukden Railway to recognize the purchases made of Fushun coal.**

It is stated in this case that the Peking-Mukden Railway owes the South Manchuria Railway 634,000 yen on account of Fushun coal supplied and only agrees to pay in monthly installment of 20,000 yen after the latter urges settlement.

This case appears to us to be one of ordinary business transaction and as stated is also a matter that has already been settled. In their attempt to make out a case against China as a justification for their recent conduct in Manchuria the Japanese have certainly left no stone unturned. The case is left out from the list given out in Shanghai.

No. 39. **Alleged forcible construction of a railway across a Japanese farm at Mukden.**

In 1915 a Japanese by the name Sakakibura leased a tract of land at Mukden as a farm, agreeing to pay a rental of $600 annually on every February 1st, irrespective of the condition of the crop. This Japanese, however, failed to live up to his obligations after entering into occupation and paid no more than $500 in a period of ten years. In consequence his right was expressly cancelled by the Chinese authorities in 1925.

Shortly afterwards a Chinese railway was projected across this tract of land from the Huangkutun Station of the Peking-Mukden Railway to the airdrome at Mukden. When this took place the Japanese Consul-General presented a demand for compensation. The Japanese claim was naturally not admitted, and on June 27, 1929, Sakakibura, stated the Japanese, "was compelled to remove the railway" with, we may add, the help of Japanese armed forces!

No. 40. **Alleged pressure upon the Japanese residents in the walled city of Mukden.**

The issue involved in this case is the same as in Case 27 and need not be discussed again. It may be observed in passing that in the last thirty years at least China has not been strict in excluding foreign nationals from towns not opened to international trade and residence; and that if in Manchuria a different policy is to a
certain extent followed, it is simply because the presence of Japanese nationals means also the presence of Japanese police force.

No. 41. Alleged pressure upon Japanese residents in the walled city of Sanhsing.

This case is similar to the last so far as the principle is concerned. As to facts, according to the local authorities, the Japanese statement needs supplementation. Practically all of the Japanese residents in the walled city of Sanhsing, they say, are engaged in prostitution, and for that reason alone they have forfeited their right to remain there.

No. 42. Alleged pressure upon the Japanese telephone in the walled city of Mukden.

About two years ago arrangement was made between the Chinese and Japanese authorities to change the pole into the cable system for the Japanese telephone in the walled city on account of the replanning of the town. When the Japanese came to carry out the arrangement, they, however, took advantage of the change to extend their system. This, of course, was objected to by the Chinese, and hence the Japanese complaint. The Japanese justified their action on the ground that Japan had reserved her right to operate telephone under Article II of the convention of October 12, 1908, when she restored the telegraph lines in Manchuria to China. The Chinese on the other hand pointed out that Japan also undertook in the same article not to extend the then existing system. The said article reads:

Japan undertakes immediately to hand over to China, against the payment of 50,000 Yen, all Japanese telegraph lines in Manchuria outside the railway territory. Japan is prepared to enter into negotiation with China with a view to coming to a certain arrangement concerning the Japanese telephone service in Manchuria outside the railway territory. Pending the conclusion of such an arrangement, Japan undertakes neither to extend her present telephone system in Manchuria without having first obtained the consent of the Chinese Government, nor to use her telephone lines for the transmission of telegrams in competition with the Chinese telegraph lines.

The Japanese evidently have no cause of complaint in this case.
GROUP VII.—CASES RELATING TO THE KOREANS

No. 43. Disregard of treaty in the prohibition against selling and leasing land in the interior to Koreans.

The Japanese complaint is directed against the regulations issued by the provincial authorities of Liaoning and Kirin in the last couple of years for the punishment of Chinese nationals who were to dispose of land to foreigners by the circumvention of the law. Five cases of actual application of the regulations were given in the case of Liaoning. The treaty referred to is the one relating to South Manchuria and Eastern Inner Mongolia concluded in 1915 under the Twenty-one Demands. The relevant parts of that document read:

Article II.—Japanese subjects in South Manchuria may, by negotiation, lease land necessary for erecting suitable buildings for trade and manufacture or for prosecuting agricultural enterprises.

Article III.—Japanese subjects shall be free to reside and travel in South Manchuria and to engage in business and manufacture of any kind whatsoever.

Article IV.—In the event of Japanese and Chinese desiring jointly to undertake agricultural enterprises and industries incidental thereto, the Chinese Government may give its permission.

Article V.—The Japanese subjects referred to in the preceding three articles, besides being required to register with the local authorities passports which they must procure under the existing regulations, shall also submit to the police laws and ordinances and taxation of China.

Civil and criminal cases in which the defendants are Japanese shall be tried and adjudicated by the Japanese Consul; those in which the defendants are Chinese shall be tried and adjudicated by Chinese Authorities. In either case an officer may be deputed to the court to attend the proceedings. But mixed civil cases between Chinese and Japanese relating to land shall be tried and adjudicated by delegates of both nations conjointly in accordance with Chinese law and local usage.
When, in future, the judicial system in the said region is completely reformed, all civil and criminal cases concerning Japanese subjects shall be tried and adjudicated entirely by Chinese law courts.

The question in the present case is whether China is privileged to disregard the provisions just cited. The treaties of which these provisions form a part were concluded, as already stated, under the Twenty-one Demands. They were extorted from the de facto Yuan Shih-k'ai government, not because there was provocation on the part of China or existing controversy to satisfy, but simply because China was on the eve of a civil war and the Powers were engaged in a death and life struggle. On account of these circumstances China has questioned the equity and justice of these treaties and therefore their fundamental validity.

At both the Versailles and Washington Conferences, the first opportunities offered, China sought to have these treaties reconsidered and cancelled, but in both occasions Japan refused to entertain the Chinese proposal. China then took the matter up with Japan direct in 1923, but in this occasion her attempt was no more successful.

In view of the fact that China not only has important considerations of equity and justice on her side, but has also exhausted all means to secure reconsideration, she is quite justified in refusing to apply these treaties. But as a matter of fact, so far as the provisions under consideration in the present case are concerned, China has the right to suspend their operation, irrespective of her attitude concerning their validity.

As clearly stated in those provisions, the Japanese subjects are free to reside, travel and lease land only in South Manchuria and are further to submit to the police laws and ordinances of China. But Japan has never been willing to be so confined. She has claimed to exercise police jurisdiction over these subjects and to interpret the term South Manchuria to cover such districts as are clearly within what she herself describes as Eastern Inner Mongolia. In view of the right to enjoy consular jurisdiction granted in the provisions to Japanese subjects, these pretensions would result in Japan's dividing jurisdiction with China over practically one half of Manchuria. What else could the latter do, if she were
not to adopt some such measures as the suspension of the operation of the provisions?

The Japanese charge against China in this case, so far as it concerns the Tumen region, is based upon the agreement of September 4, 1909, relating to the Tumen boundary. According to the Japanese the Koreans in that region have the right to lease or own land under the 1909 agreement independent of the 1915 treaty. They evidently have in mind the following provision in Article V:

The Government of China engages that land and buildings owned by Korean subjects in the mixed residence district to the north of the River Tumen shall be protected equally with the properties of Chinese subjects.

The Japanese seem, however, to have forgotten that the agreement of 1909 is concerned with Koreans already in residence on the north bank of the Tumen within certain limits shown on a map annexed to the agreement, and not with Koreans who may come afterwards or and settle outside the prescribed limits.

No. 44. Alleged oppression\(^a\) of Koreans.

Three cases are given for the alleged oppression, of which the most important is the recent Wanpaoshan case. The Japanese statement reads:

In July, 1931, the authorities of the Kirin Province, in order to drive out the Korean farmers of Wanpaoshan, illegally interfered with tenantry, and the Koreans were finally forced out which led to the so-called Wanpaoshan incident.

This case is too fresh in our mind to need a full review. Suffice it to say that the Japanese statement rather distorts the facts. Official interference in the case was not for the purpose of driving out the Korean farmers, for it had not been the policy of the Kirin government to enforce the regulations against Korean immigration in districts adjacent to the South Manchuria Railway. If the local authorities took cognizance of the case, it was because their attention was called to the dispute that had arisen between the Koreans

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\(^a\) As stated in the Shanghai list.
and local inhabitants. The Japanese charge that these authorities "illegally interfered with tenancy" is not any better founded. When the matter was looked into, it was found that the Koreans had started farming in an irregular way. Not only the Chinese who re-leased the farm to them did not register his original lease with the government, but the Koreans themselves also failed, when they took it over, to comply with the same regulations. Worse still, when these Koreans started to bring water from the nearby river into the farm for irrigation purposes, they dug wide ditches across the neighbors' farm and dammed the river in such a way as to block communication. In view of these irregularities, is it fair to say that the Chinese authorities "illegally interfered with tenancy"?

As to the statement that the Koreans were finally forced out supplementation is also necessary. The Koreans concerned undoubtedly deserve the fate of being forced out, but so far as facts go, they were not actually forced out, and this is due to none other than Japanese intervention by armed force. They have spoken of Chinese oppression of Koreans! It seems more appropriate to speak of Japanese oppression of Chinese.

No. 45. Alleged disregard of treaty rights in the arrest and conviction of Koreans.

The Japanese state that recently the Chinese authorities in Manchuria "in disregard of treaty rights arrested and imprisoned Koreans promiscuously," alleging that they have discovered 60 such persons in the Mukden penitentiary, 40 in Tunghua, 230 in Kirin and 40 in Harbin since the beginning of the present military occupation.

Persons who are connected with the Manchurian government have denied the charge. According to them, if these Koreans were in penitentiaries as alleged, they are most likely naturalized Chinese citizens, who, as Japan maintains the principles of indelible allegiance with regard to Koreans, are naturally Japanese subjects from the Japanese standpoint.

No. 46. Alleged non-recognition of the right of Japanese subjects to consular jurisdiction in decision rendered by the Kirin provincial court.
None of the persons of whom we have enquired is able to understand this charge. They state categorically that as far as they know what is said is not the attitude of the Kirin provincial court in the matter. Some add that it is quite possible that at the time the National Government declared the termination of consular jurisdiction to become effective on January 1, 1930, the said court might have for a time made the ruling; but that if it had ever done so, the practice had never been continued.

It may be noted that this case does not appear in the Shanghai list.

No. 47. Alleged disregard of the agreement relating to the Tumen boundary.

Three charges are made in this case. The first is that the Chinese government refuses to recognize that the Koreans have the right to own land. This point has been incidentally dealt with in Case 43. The agreement does not pretend to provide for new immigrants. In fact not even immigration is contemplated. It is meant only to regulate questions relating to Koreans already found in the Tumen region. If reference is made to land owned by Koreans, it merely touches a point of fact and cannot be interpreted to have conferred a right to own land upon future Koreans whose arrival is strictly not permissible.

The second charge is that the Chinese government has restricted the freedom of the Koreans in the matter of exporting cereals. The Japanese seem to have forgotten that the Chinese Government has the right to do what they have complained of. Article V of the agreement so far as it deals with the question says:

In respect to cereals produced in the mixed residence district, Korean subjects shall be permitted to export them out of the said district, except in time of scarcity, in which case such exportation may be prohibited.

The Japanese remark that the act of the Chinese government causes great loss to the Koreans of the Tumen region in view of the fact that cereals are twice as expensive in parts of Korea. They seem to care only for the profit that a few exporters may make.

The third charge is that the Chinese government is not in the habit of notifying the Japanese consular officers in cases relating
to Koreans. Again they seem to have forgotten something. The section of Article IV that deals with the question reads:

All cases, civil or criminal, relating to Korean subjects shall be heard and decided by the Chinese authorities in accordance with the laws of China, and in a just and equitable manner. A Japanese consular officer or an official duly authorized by him shall be allowed freely to attend the court, and in the hearing of important cases concerning the lives of persons, previous notice is to be given to the Japanese consular officers.

So it is "in the hearing of important cases concerning the lives of persons" that "previous notice is to be given to the Japanese consular officers." According to the local authorities the Chinese government has never failed in fulfilling China's obligation in this respect.

Like the last, the present case is not found among the list issued at Shanghai.

GROUP VIII.—OTHER CASES


In these three cases the Japanese complain respectively of Chinese school text-books, the Northeastern Cultural Society and the Liaoning People's Foreign Relations Association as anti-Japanese. In the first the Japanese speak of the insertion of anti-Japanese material. This as far as we can ascertain is nothing but the actual history of Sino-Japanese relations in recent years.

In the case against the Northeastern Cultural Society the Japanese merely cite an instance of inaccuracy in report. This report concerns an accident in the Fushun Mines, which according to the Society involved 3,000 lives, but according to the Japanese involved none. The Society is undoubtedly too credulous in believing rumors as facts even in view of the frequency of loss of lives in the Fushun Mines. But if an instance of inaccuracy in report could be taken as evidence in a charge of an official nature as in this case, what would Japan have to say about the various sorts of rumors
Japanese news agencies and newspapers in China have from time to time circulated?

The Japanese charge against the Liaoning People's Foreign Relations Association is not even supported with concrete evidence, and hence needs no comment.

No. 51 Alleged oppression of the Sheng-king-shih-pao.

The Sheng-king-shih-pao is a Japanese daily published in the Chinese language in Mukden. The Japanese allege that in several occasions the Chinese authorities undertook to obstruct Chinese patronage by, for instance, the persecution of Chinese sales agents.

We have not been able to verify the allegation. But perhaps it is immaterial. This Japanese daily is known to be in the habit of spreading wild rumors in time of crisis, e. g., mutiny and the death of some important personages, evidently with a purpose, and yet at the same time it places itself, through the abuse of the consular jurisdiction in China practiced by the Japanese, beyond the control of the Chinese authorities. If the latter were not to resort to the methods complained of, in what way could they check its evil influence as well as to bring it to its sense of responsibility?

No. 52. Alleged discrimination with regard to travel in certain parts of Manchuria.

It is alleged by the Japanese that in the last ten years it has been the policy of the Chinese authorities to prevent the Japanese from travelling in the district west of Taonan and in northern Kirin, and recently also in Hulutao. They, however, do not stop to question China's right to have the policy, but proceed to complain of discrimination and state as evidence that allonge warning the holders not to go to the above-mentioned places are attached to the hu-chao (passport) issued to the Japanese.

The Chinese authorities in Manchuria deny that there is discrimination in the matter. They say that requests to travellers on the point are as a rule communicated to all foreign consulates. If special allonge is sometimes attached to hu-chao issue to the Japanese, it is simply because the latter seem to be more forgetful of the warnings of their consuls than other peoples.
No. 53. Alleged obstructions at a Japanese farm at Tungliao.

The Japanese complain that the local authorities by driving the workers away have prevented the farm from building a dyke. But even from the facts supplied by the Japanese alone, it seems that in doing as complained of the local authorities have acted within the limits of their power. Tungliao is in what the Japanese themselves describe as Eastern Inner Mongolia. Even under the treaty of 1915 concluded under the Twenty-one Demands the Japanese could only have joint agricultural enterprise with the Chinese in that region and not by themselves alone.

No. 54. Alleged murder of Captain Nakamura and party by Chinese soldiery.

It is alleged by the Japanese that Nakamura and party who travelled through the Hsingan Reclamation district in July, 1931, were arrested by the Third Regiment of the Reclamation Army on the 26th of the same month and later murdered.

This is perhaps one of the very few charges to which no definite answer can be given, as the present military occupation has interrupted all efforts on the part of China to clear up the point. Enquiry at Harbin where Nakamura is known to have secured his hu-chao (passport) reveals that Nakamura applied for the paper as an ordinary civilian and for travel in Manchuria in general. According to the officer in charge of the Hu-chao Bureau the Chinese authorities did not have any knowledge of Nakamura’s real intention. In fact in this case, as in other cases, it was assumed that the applicant had been warned of the risks attending such a trip as he secretly undertook later, since all consulates at Harbin, including the Japanese, were kept informed of the condition of the district concerned. From the same source it is learned that after the missing of Nakamura, it was discovered that before he proceeded to Harbin this Japanese adventurer had been turned down by the Hu-chao Bureau at Mukden, when he applied for the paper as a Japanese military and with the express purpose of visiting the Hsingan district.

The Nakamura Case is certainly a fitting conclusion to the list from the Japanese standpoint, because it is the one through which
they eventually succeeded in rousing public sentiment in support of their lawless military adventure. But it appears to us also to be a very proper ending, because it illustrates best Japan's conduct in Manchuria. At every turn in their relations with the Chinese, either the people or the government, the Japanese must insist upon going beyond the limits. If they succeed, well and good: otherwise, they will come back and allege that the Chinese are acting illegally, or are obstructive, or incompetent, or oppressive, or discriminative or evasive, or what not!
The China Society of America is an organization, incorporated in 1913 under the laws of the State of New York, to promote friendly relations and mutual understanding between the peoples of China and the United States.