For the sake of completeness Article IV is quoted, although the last two paragraphs of it deal with its signature:

> The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by Her Majesty the Queen of the Netherlands; and the ratifications shall be exchanged as soon as possible. It shall take effect immediately after the exchange of ratifications, and shall continue in force for a period of five years; and it shall thereafter remain in force until twelve months after one of the high contracting parties have given notice to the other of an intention to terminate it.
>
> In witness whereof the respective plenipotentiaries have signed the present treaty and have affixed thereunto their seals.
>
> Done in Washington on the eighteenth day of December, in the year of our Lord nineteen hundred and thirteen.

The treaty, it will be noted, is concluded for a period of five years, but in reality it is for six years, as it remains in force for a twelvemonth after one or the other party may have given notice of an intention to terminate it.

From this brief analysis of the convention, it is evident that it does not interfere with any existing agency of peace, because the nations are always free, through the channels of diplomacy, to adjust their disputes by direct negotiations or by some other means, if they so desire. Arbitration is expressly reserved, so that the present treaty supplements, but does not modify, a duty to arbitrate. It does bind the nations, however, to submit their other disputes without reservation to the investigation and report of a permanent commission, which can act upon their mutual request, or indeed without their request, and Mr. Bryan is to be congratulated upon having secured the discussion of all disputes between the contracting parties, not otherwise provided for, by the apparently simple yet effective device of an investigation and report, which is believed to be tantamount to settlement.

THE AMERICAN-JAPANESE DISCUSSIONS RELATING TO THE LAND TENURE LAW OF CALIFORNIA

The question of the California land tenure law as it affects the subjects of Japan has recently again been brought into prominence and in a way to attract as much as possible the attention of the public in the two countries. It seems that, after the exchange of diplomatic notes last year between the Secretary of State and the Japanese Ambassador

at Washington, the two Governments entertained a proposal to adjust the matter by the conclusion of a special convention. How far negotiations looking to this end had progressed has not been divulged. In any event, the proposed solution was apparently not relished in Japan, for, with the change in the ministry at Tokio, came also a change in the attitude of the Government there. This was indicated in an instruction from the Minister for Foreign Affairs to the Japanese Ambassador at Washington, delivered to the Department of State on June 10, 1914, in which the Minister for Foreign Affairs, referring to the proposed convention, stated that it appeared to be calculated to create new difficulties instead of composing existing misunderstandings. He therefore declined to proceed with the negotiations and requested a continuance of the previous correspondence looking toward a diplomatic settlement. At the same time, he suggested that the correspondence be made public, in the belief that fuller and more accurate information regarding the matter will contribute to the final settlement of the controversy. The correspondence was, accordingly, given to the press by the Secretary of State a few days later, and the exact issues between the two Governments are for the first time available for public discussion and consideration.

The act of the legislature of California which is the subject of the controversy is entitled "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, and repealing all acts or parts of acts inconsistent or in conflict herewith." The act was approved on May 19, 1913, and constitutes Chapter 113 of the Statutes of California. Briefly, the act provides that all aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in the same manner and to the same extent as American citizens; but that all other aliens shall have and enjoy such rights with respect to real property in the manner and to the extent and for the purposes prescribed by any treaty now existing between the governments of such aliens and the United States, and may in addition thereto lease lands for agricultural purposes for a term not exceeding three years. The act includes companies, associations and corporations and provisions are inserted for the sale of real property and distribution of the proceeds where the heir or devisee is disqualified to take under the act and for the escheat of real prop-

erty acquired by companies, associations or corporations, in violation of the act. The act is printed in the supplement to this JOURNAL, page 177.

Upon the passage of the act by the legislature and before its approval by the Governor, the Japanese Ambassador at Washington on May 9, 1913, filed a protest with the Department of State, in which he termed the act as "unfair, unjust, inequitable and discriminatory," "primarily directed against Japanese and prejudicial to their existing rights," "inconsistent with the provisions of the treaty in force," and "opposed to the spirit and fundamental principles of amity and good understanding upon which the conventional relations of the two countries depend." He then enumerated certain specific objections to the legislation, which will be discussed later on. The Secretary of State replied on May 19th, stating that Japan had been misled in its interpretation of the spirit and object of the legislation; that it is not political nor a part of any general national policy of unfriendliness. He referred to the efforts of the President and himself to induce the California legislature to modify the legislation, which, he stated, was wholly economic and based upon the particular economic conditions existing in California.

The Japanese Ambassador cabled the Secretary's reply to his Government and on June 4th, by its direction, he presented another note, accompanied by an aide-mémoire and telegram from the Minister for Foreign Affairs, in which the previous objections were maintained and the law referred to as "intentionally racially discriminatory," and, basing his statement on the small number of Japanese who own land and the inconsiderable amount of such land and the annually decreasing number of Japanese who enter the United States, he denied that the law had any economic basis. On July 16th, the Secretary of State replied in detail and likewise accompanied his note with an aide-mémoire. In reply to the allegation that the legislation was racially discriminatory, the Secretary of State said:

> I can not help feeling that in the representations submitted by your excellency the supposition of racial discrimination occupies a position of prominence which it does not deserve and which is not justified by the facts. I am quite prepared to admit that all differences between human beings—differences in appearance, differences in manner, differences in speech, differences in opinion, differences in nationality, and differences in race—may provoke a certain antagonism; but none of these differences is likely to produce serious results unless it becomes associated with an interest of a contentious nature, such as that of the struggle for existence. In this economic contest the division no doubt may often take place on racial lines, but it does so not because of racial antagonism but because of the circumstance that the traditions

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

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

In support of this statement he cited the exclusion of Chinese laborers from Japan, under an Imperial ordinance of 1899, and added:

The Department is, however, far from imputing to the Imperial Government in its enforcement of the ordinance a design to make a racial discrimination. On the contrary, the Department assumes that the question with which the Imperial Government were seeking to deal was in its essence economic and racial only incidentally, and that this would continue to be the case even if the ordinance, although it was no doubt originally designed to exclude Chinese laborers, should be applied to laborers of another race.

The reply to this note was the last communication in the correspondence prior to the consideration of the proposal for a new treaty. It was delivered to the Department of State on August 26, 1913, and in it the Minister for Foreign Affairs stated that the gravamen of the Japanese complaint is that the legislation is "*ex industria* discriminatory against this Empire as compared with other states" and "mortifying to the nation and disregardful of the national susceptibilities of the Japanese people." He added:

Whatever causes may have been responsible for the measure, it can not be denied that, in its final manifestation, it is clearly indicative of racial antagonism. Nor, in the opinion of the Imperial Government, can any justification for such enactment be found in the assertion that it was "the emanation of economic conditions." It is the high office of modern treaties of commerce to prevent undue international discriminations, and the most favored nation principle, which finds a place in nearly all such compacts, has had the effect, in an international sense, of equalizing opportunities in all the various avenues of commercial and industrial life. It is true that special privileges are, in exceptional circumstances, sometimes granted by one nation in favor of another, but the present case stands out, it is believed, as the one single instance without historical parallel, in which a state maintaining, by treaty, the reciprocal most favored nation relations with another state, has ever, in a matter such as that under discussion, essayed to discriminate against such other state, as compared with third powers with which no such relations exist.

The Ambassador further added that his Government did not understand the reason or necessity for the allusion to the exclusion of Chinese laborers from Japan for "the question of immigration has nothing what-

ever to do with the present controversy, and any reference to it only tends to obscure the real issue." He referred to the satisfaction with which both Governments viewed the existing arrangement concerning the emigration of laborers to the United States and said:

> In order to correct and finally dispel the popular error, I wish to say that there is no question whatever between Japan and the United States on the subject of the Japanese labor immigration into the United States. The present controversy relates exclusively to the question of the treatment of the Japanese subjects who are lawfully in the United States or may hereafter lawfully become resident therein consistently with the existing regulations.

Japan specifically objects to the California legislation because, it is asserted, it threatens the rights vested in Japanese subjects under the treaty of commerce and navigation of November 22, 1894, and impairs the rights and privileges granted to them by the treaty of commerce and navigation of February 21, 1911, which superseded the former treaty. Both treaties are printed in full in the supplement to this JOURNAL, Volume 5, pages 100, 106. The United States denies generally that these allegations are well founded, and points to the express terms of the law which purport to respect and preserve all existing treaty rights. If the law fails to do this, it is pointed out that treaties are the supreme law of the land and rights acquired under them will be protected and enforced in the courts, both State and Federal. While admitting that an effort was made to bring the law into accord with treaty stipulations, the Japanese contend that the actual provisions of the law can not be reconciled with those stipulations. As to the suggestion that the question be referred to the courts, Japan declines to accept it on two grounds: first, because the question at issue is between the two Governments as to the true intent and meaning of the treaty, a question properly amenable to ordinary diplomatic processes; and, secondly, because the burden of the delay and hardships involved in private litigation, not being thrown upon other aliens, will work to the disadvantage of the Japanese and operate as a discrimination. The counter-suggestion is made that any procedure in the courts looking to the preservation of treaty rights should be initiated by the Federal Government, to which the United States replies that questions concerning private titles to land, whether such titles be assured by treaty or not, are adjudicated upon the suit of the parties in interest, without any interposition on the part of the United States Government, and it gives reasons why such practice works greatly to the advantage of the individual suitors.

In this connection, Japan raises the further question as to what will become of the rights which Japanese subjects now have in California under the treaty and the law in case the treaty should cease to be in force, and points out that the rights assured to other aliens in this respect are not dependent upon treaty engagements. As to this, the Secretary of State assures the Ambassador that, in the event of such a contingency, the Government of the United States would safeguard the rights now secured by treaty.

More particularly, the Japanese Government alleges that the legislation violates the express stipulations of the treaty of commerce and navigation of 1911 in the following respects:

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

(b) That, so far as the act deprives Japanese subjects of the capacity to bequeath and transmit to their devisees and heirs real property and interest therein, duly acquired by them under said treaty, it is inconsistent with the first and third clauses of Article I, since, in addition to the guarantee of equal treatment which is contained in the first clause above mentioned, property of Japanese subjects is, by the third clause aforesaid, assured of the same most constant protection, the same equal protection of equal laws, that is accorded to the property of American citizens, and it goes without saying that property rights of such citizens still remain complete and undisturbed; and

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

It is also contended:

(d) That the act in question, so far as it takes away from Japanese subjects the right to dispose, in any manner whatsoever, of the real property or interest therein, lawfully acquired by them prior to July 17, 1911 [the date on which the treaty of 1911 went into effect], is an impairment of vested rights created under the treaty of 1894.

(e) That the legislation discriminates against Japanese subjects not only as compared with American citizens, but as compared with the subjects of other countries, and is therefore a denial of the most favored nation treatment guaranteed by Article XIV of the treaty.

The United States answers:

(a) That Article I of the treaty, which refers to real property, makes no reference to the ownership of land, but merely stipulates that the citizens or subjects of the contracting parties shall have the liberty "to own or lease and occupy houses, manufactories, warehouses, and shops" and "to lease land for residential purposes."

The Secretary continues:

> The question of the ownership of land was, in pursuance of the desire of the Japanese Government. dealt with by an exchange of notes in which it was acknowledged and agreed that this question should be regulated in each country by the local law, and that the law applicable in the United States in this regard was that of the respective States. This clearly appears from the note of Baron Uchida to Mr. Knox of February 21, 1911, in which, in reply to an inquiry of the latter on the subject, Baron Uchida said:
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> > "In return for the rights of land ownership which are granted Japanese by the laws of the various States of the United States [of which, I may observe, there are now about 30] the Imperial Government will by liberal interpretation of the law be prepared to grant land ownership to *American citizens from all the States, reserving for the future, however, the right of maintaining the condition of reciprocity with respect to the separate States.*"

From the foregoing the Secretary of State concludes:

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

(b) The Department reiterates its assertion that, inasmuch as the California statute in express terms requires the recognition of treaty rights, it is not to be assumed that any such right would not be fully protected.

(c) That the Japanese contention extends "too far the theory that the ownership of property carries with it a vested right to dispose of such property in all the ways in which property may be transferred, by sale, by gift, or devise, or by descent, without future limitation or restriction." It is added that "such a theory would render it impossible

for a country to alter its laws with regard to the transmission of property."

(d) As to the fear of the Japanese Government that vested rights of property are impaired by the statute, the Secretary of State assures that Government that such rights will be fully protected by the courts. He goes further and states that:

> If a case should ever be disclosed in which it was maintained by the Imperial Government that the existing property rights of one of its subjects had been impaired by the statute, this Government would stand ready to compensate him for any loss which he might be shown to have sustained, or even, in order to avoid any possible allegation of injury, to purchase from him his lands at their full market value prior to the enactment of the statute.

(e) In answer to the allegation that the act is repugnant to the most favored nation clause of the treaty, the Department points out that most favored nation clauses universally relate to matters of commerce and navigation; that the alien ownership of land has seldom been treated in the practice of the United States as a matter of most favored nation treatment but has been secured only by special treaty stipulations.

In the course of the discussion the Japanese Ambassador referred to the naturalization laws of the United States under which, he stated, "Japanese subjects are as a nation, apparently denied the right to acquire American nationality." This, he said, was "mortifying to the Government and people of Japan, since the racial distinction inferable from those provisions is hurtful to their just national susceptibilities." In reply, the Secretary of State denied that the naturalization laws of the United States make any distinction that may be considered as national, and stated that an historical examination of them would show that the Government and people of Japan have no ground to feel that any discrimination against them was intended. Inasmuch as the Ambassador had acknowledged that the question of naturalization "is a political problem of national and not international concern," the subject was not further alluded to.

From the point of view of international law, the issues thus raised between the two governments are very interesting and important, but it would not be possible within the limits of these columns to enter into a discussion of the questions involved with any expectation of satisfactorily treating them. The correspondence has been summarized in such a way, it is hoped, as to give to our readers a clear idea of the problem before the two governments for solution.