

In reply refer to
file No.

1797/63-54

DEPARTMENT OF STATE,
WASHINGTON.

(L)

November 13, 1906.

The Honorable

The Attorney General.

S i r:

I have the honor to acknowledge the receipt of your letter of November 7th enclosing copies of two letters from the United States Attorney for the Northern District of California, dated November 2, 1906, in relation to the exclusion of Japanese children from the public schools of San Francisco.

The letter of the District Attorney does not refer to that part of the treaty with Japan upon which the Japanese Government bases its claim. The claim is not made under Article 14 of the treaty, nor is it based upon the simple right of residence granted by Article 1. The claim is that Article 1, in its first paragraph, confers upon the citizens of Japan "full liberty to enter, travel or reside in any part of" the United States; and in paragraph 3 provides "In whatever relates to rights of residence and travel x x x the citizens or subjects of each contracting party shall enjoy in the territories of the other, the same privileges, liberties and

and rights and shall be subject to no higher imposts or charges in these respects than native citizens or subjects, or citizens or subjects of the most favored nation.

This provision is about as sweeping as any that can be found in any treaty. It not only assures to the Japanese the right of residence, but it assures to them as residents all the privileges, liberties and rights accorded citizens of the most favored nation as residents or to natives as residents. It is certainly difficult to contend that in a State, the Constitution of which requires the maintenance of a free public school system and which does maintain such a system for the education of the children of residents without regard to citizenship, which admits to its schools resident children generally, whether their parents be citizens of other States, or citizens of England, France, Germany, Russia, or any other European country, the right or privilege of education in the public schools of the State is not a right or privilege secured by this treaty provision.

It is particularly worthy of note that the treaty of 1894 in which the provision quoted occurs,

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y a treaty expressly designed for the maintenance of good understanding between the two countries by increasing the intercourse between them upon the basis of equity and mutual benefit, and it was expressly substituted for previous treaties which contained provisions for the exclusion of citizens of the two countries from intercourse upon an equal footing. The whole purpose and end of the treaty of 1894 was to do away with and prevent just such exclusions as are now provided by the San Francisco School Board. The particular language of the treaty must be read with reference to this general purpose.

I cannot doubt, therefore, that the Japanese residents of San Francisco are entitled under the treaty to have their children receive the same educational privileges in the public schools of their place of residence as English, and French, and German and American children receive.

The question whether the exclusion of the Japanese children from the schools attended by children of all other countries except China and providing a separate school for them and the Chinese, is a granting to them of the same right and privilege which are granted to the citizens of all other countries seems to me to present more difficulty. A technical argument, looking only to the surface of thing, may be made in favor of the proposition that the separation is

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is not a withholding of the privilege. If, however, we look at the reality it is a withholding of the privilege. It is not giving to the Japanese children the same privilege which is given to the English, French, German, American, etc., and it is not giving them an equivalent privilege. It is in its essence a discrimination against the Japanese children and it is a discrimination based upon an assumption of inferiority and unfitness to associate with the children of citizens of the favored nations and of Americans. It is a discrimination which no proud and sensitive people of a high degree of refinement and civilization can possibly submit to without resentment. It is completely subversive of the purpose and spirit of the treaty, and is, in my judgment, a violation of its terms.

I transmit herewith a copy of a report from Secretary Metcalf to the President which the Secretary has been good enough to send to me.

Faithfully yours,

ELIHU ROOT

Enclosure:

To the President from the
Secretary of Commerce and Labor.

November 2, 1906.

