

Secretary of State,
DEC 13 1906

The laws of Japan relating to the treatment of Americans?

What limitations there are.

The limitations to the treatment accorded Americans under the laws of Japan are identical with the limitations to the treatment of other foreigners under those laws. Article 2 of the Civil Code of Japan provides:- "Foreigners enjoy private rights except as forbidden by law, regulation, or treaty". Thus all rights so accorded foreigners under the laws of Japan appertain to them all alike and irrespective of, and even in case of the abrogation of, treaties.

Through the operation of unconditional favored nation clauses in most of the various treaties almost all the rights enjoyed by foreigners, in addition to those given directly by the laws of Japan, are secured equally to all foreigners.

The following are exceptions to this uniformity in the treatment of foreigners under treaty provisions:

1. Chinese subjects enjoy, under the treaty negotiated at Peking a year ago, certain rights to invest in corporations controlling railways and exploiting timber lands in southern Manchuria; but these are special conditions growing out of Russo-Chinese arrangements and the effects of the war thereon and are not therefore considered to form a discrimination against foreigners other than Chinese.

2. The Japanese Government has, through an order of the Ministry of Education, specified the particular schools in the Japanese Empire which alone Chinese students may attend. This is understood to have been done in the interest of good morals and also at the instance of the Chinese Government in order that it might, through Chinese inspectors resident in Japan, the better control the Chinese students, some of whom

were openly plotting against the Manchu dynasty. No such limitation has been heard of in the case of other foreigners who might wish to attend Japanese educational institutions. There is, therefore, discrimination in this matter in regard to the Chinese; but it is discrimination against the individual with the compliance of and probably at the request of the Chinese Government.

3. The protection of literary, artistic, and industrial property is not held to be covered by the unconditional favored nation clause, but must be separately secured by convention by each foreign government.

4. That the detailed provisions of a consular convention might be availed of by other governments through the favored nation clause seems to be in doubt.

Inasmuch as Americans enjoy the same rights as other foreigners under the laws of Japan and also enjoy most favored nation treatment, to ascertain what limitations there are to the rights of Americans in Japan it is only necessary to find wherein favored nation differs from national treatment.

The following are disabilities under which foreigners are placed under the laws or regulations of Japan:

Natural Persons.

Foreigners are not permitted to own land. Their right to have and use land as a right of residence under Article I of the American-Japanese treaty of 1894 is met only by the ability to hold land under a superficies for a definite term of years, which may be very long. This, evidently, is not exactly national treatment; but it is only in degree a greater disability than is placed upon foreigners by the laws of a good many of the United States which do not permit foreigners to own land. These remarks do not, of course, apply to the old perpetual leases, limited in number, forming a special class which were confirmed by the treaty of 1894. The Regulations for Residents in the Kwantung leased territory, Article 3, pro-

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provide that:- "Foreigners, (excepting Chinese) shall be permitted until further notice to reside and lease or own real property only within the town limits of Tairen (Dalny) and "Port Arthur." This may be a post-bellum temporary restriction, but it is clearly a departure from national treatment as to the right of residence in Japanese territory. Military reasons are doubtless its basis.

Article 5 of the Mining Law of the Japanese Empire provides:- "No persons other than subjects of the Empire, or companies duly formed in accordance with the laws thereof, may engage in mining operations in Japan." Thus foreigners are denied national treatment in regard to mining.

Foreigners are not allowed to own shares in the Bank of Japan (a semi-governmental institution) nor in the Yokohama Specie Bank, Ltd., a bank which issues notes and which enjoys Government's patronage, especially in Korea and in Manchuria.

They are not allowed to become members of the Stock Exchange.

They are not allowed to own Japanese ships, or to receive bounties for ship-building or for navigation.

Foreigners are excluded from membership in the Tea Traders' Guild, an organization which receives from the Japanese Government the sum of yen 35,000 per annum (formerly yen 70,000) as a subsidy ostensibly for the improvement of the Japanese tea trade. American and British merchants in Japan maintain that this is in effect a bounty to their competitors and so a discrimination against foreigners. This view seemed correct to our Embassy; but the Japanese Government resisted all efforts to place the burden of proof upon them.

The provisions relating to the personal status of foreigners, - naturalization, adoption, marriage, et cetera, - are sufficiently liberal, distinction being made generally only so far as is necessitated by the fact of foreign nation-

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Rights of foreigners as members of Japanese
juridical persons.

Japanese juridical persons, although even composed exclusively of foreigners, have the same rights as such juridical persons when composed of both foreigners and Japanese or exclusively of Japanese subjects. For example, a Japanese juridical person composed of foreigners might be permitted to engage in mining. However, another article of the law gives the Office for the Control of Mines and the Minister of Agriculture and Commerce authority to reject any applications found to be injurious to the public welfare. The government is thus competent to refuse to grant a mining permit to a Japanese juridical person composed of foreigners, if to grant it be thought against public policy. A similar administrative control attaches to the granting of permits for various business or professional enterprises.

Rights of foreign juridical persons.

Article 36 of the Civil Code provides:- "The existence of foreign juridical persons other than States, administrative districts and commercial companies is not admitted; but this does not apply to such foreign juridical persons as are admitted by law or treaty. (None:- None are so admitted by law or treaty.)

"Foreign juridical persons admitted under the provisions of the preceding paragraph have the same rights as the

"same classes of juridical persons existing in Japan; but this
"does not apply to such rights as foreigners cannot enjoy, or
"so far as special provisions are made by law or treaty."

Therefore a certain class of foreign juridical persons, such, for example as those whose object is scientific, religious, or charitable, are not recognized. Such foreign juridical persons are thus denied national treatment. (This limitation was probably designed to hamper the Roman or Russian churches from gaining a foothold from which political influence would be feared).

There are special restrictions upon foreign insurance companies whereby they, unlike Japanese companies, must deposit with the Japanese Government either in cash or in approved securities, such as Japanese Government bonds, the sum of yen 150,000 or else a sum equal to the amount of the legal reserve on the volume of Japanese business done by each foreign company. The alternative single deposit of yen 150,000 was agreed to as definitive by the Japanese Government, but future administrations are hardly legally bound to it. According to the Regulations:- "Article VI. The "policy-holders, insured, beneficiaries, or members of a foreign mutual society shall in respect of its deposits have a "preferential right over its members and also over its creditors in foreign countries; Article VII. All creditors in "Japan of a foreign mutual society shall in respect of its "deposits have a preferential right over its members and also "over its creditors in foreign countries." In the case of the Japanese insurance companies, on the other hand, the fact that their property is located in Japan and capable of being seized, together with the governmental scrutiny which is exercised, is considered sufficient security. The above provision caused the Mutual Life Insurance Company to withdraw from Japan.

Agencies or branches of foreign companies doing business in Japan must register and must abide by various regulations, but these are not materially different from those applying to Japanese companies.

December 10, 1906.

Respectfully submitted to the Secretary of State.

Huntington Wilson.

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