

IN THE

Supreme Court of the State of California

Keikichi Aoki,
By Michitsugu Aoki, His Guardian
ad litem,
Petitioner,

vs.

M. A. Deane, Principal of Redding Primary
School in the City and County of San
Francisco,
Respondent.

S. F.
No. 4754.

City and County of San Francisco. } ss.
State of California,

Michitsugu Aoki, being first duly sworn, on his oath deposes and says, that the above named Keikichi Aoki was born in the Empire of Japan, that he is a subject thereof, that he is of the age of ten years and is a resident of the City and County of San Francisco, and resides with his parents at No. 1821 Laguna Street, near Pine Street, in the City and County of San Francisco, and has been a resident of the said City and County for more than six months last past;

that the above named Michitsugu Aoki, Guardian *ad litem* aforesaid, is his father; that he, the said father, was born in the Empire of Japan, is not a naturalized subject of the United States, but is a subject of the Empire of Japan; that he is a resident of the City and County of San Francisco and has been such resident for more than five years last past, and at the present time is residing at No. 1821 Laguna Street, near Pine Street, in the City and County of San Francisco, and is a party beneficially interested herein; that the above named Keikichi Aoki, infant as aforesaid, is not of filthy or vicious habits, and is not suffering and has not suffered from any contagious or infectious disease, and has all of the qualification provided by the law of the State of California and by the rules of the Board of Education of the City and County of San Francisco for admission to the primary public schools of said City and County.

That on the 17th day of January, 1907, affiant was duly appointed the guardian *ad litem* of the person of said minor, who is under the age of eighteen years, to-wit, of the age of ten years, by an order of the said Supreme Court of California duly made and entered on said day.

2. That the City and County of San Francisco is not now and for more than five years last past has not been divided into school districts, but by the law

of the State of California and also by the custom adopted and established by the Board of Education of said City and County, pupils residing therein have a right to be received as such at the public school nearest their residence, in case such school is not full and they have made sufficient progress to be received therein.

3. That the nearest public school to the residence of said affiant and of said infant in the City and County of San Francisco for the past six months has been and now is Redding Primary School, situated on Pine Street, in said City and County, between Larkin and Polk Streets; that said school is a primary public school under the control of the Board of Education of said City and County, sustained by taxes raised in said City and County for the support of public schools therein, and also by grants of land and appropriation of moneys made by the United States to the State of California for the support, among other schools, of said school, upon the understanding and with the intent that such schools should be conducted in conformity to the Constitution of the United States and to treaties made under the authority of the United States; and at the time of the application hereinafter mentioned was, and ever since that time has been, and is now in charge of M. A. Deane, as principal thereof, appointed thereto by and holding office as such, under

the said Board of Education of said City and County of San Francisco.

4. That on or about the 17th day of January, 1907, the said affiant took the said Keikichi Aoki with him to the said Redding Primary School, the same being then in session, and there found the said M. A. Deane, then and there being said principal of said school and there, as such, being the proper and only person to whom to make application for the admission of pupils to the same, and presented the said Keikichi Aoki to her, respondent aforesaid, as a pupil asking to be admitted as such to said school; that such school then and there was not full, nor was there any good or lawful reason why the said Keikichi Aoki, infant, should not be received therein as such pupil as aforesaid; that the said infant, prior to the 16th day of October, 1906, had attended such school and was a pupil therein of the fourth grade, and that the said infant had received sufficient instruction to entitle him to remain in the said grade, and had all the qualifications entitling him to enter said school and to remain in said school in the fourth grade.

5. That the said respondent declined to receive the said infant, or to entertain the said application, or to admit the said infant as such pupil, assigning as the only reason for such action and refusal the fact that he was a child of Japanese descent, and that, in

accordance with the resolution of the Board of Education of said City and County of San Francisco hereinafter referred to, said child could not be received in said school but should be sent to a separate school provided by such Board for Chinese, Japanese and Korean children, situated on the south side of Clay Street, between Powell and Mason Streets, in the said City and County of San Francisco.

That the said Keikichi Aoki was, prior to the 15th day of October, 1906, a pupil in said Redding Primary School, and had all the qualifications to remain a pupil therein, but on and after the 15th day of October, 1906, he was and has been, by virtue of said resolution, excluded therefrom, and is not permitted to attend the same as a pupil.

6. The resolution above referred to, upon which refusal of the said respondent was based, was a resolution passed and adopted by the Board of Education of the City and County of San Francisco on the 11th day of October, 1906, in the words and figures following, to-wit:

Resolved: That in accordance with Article 1, Section 1662, of the School Law of California, principals are hereby directed to send all Chinese, Japanese or Korean children to the Oriental public school, situated on the south side of Clay Street, between Powell and Mason Streets, on and after Monday, October 15, 1906.

That prior to the passage of said resolution of October 11, 1906, as hereinbefore mentioned, the Board of Education of the City and County of San Francisco, on the 6th day of May, 1905, passed and adopted a resolution, in the words and figures following, to-wit:

Resolved: That the Board of Education is determined in its efforts to effect the establishment of separate schools for Chinese and Japanese pupils not only for the purpose of relieving the congestion at present prevailing in our schools, but also for the higher end that our children should not be placed in any position where their youthful impressions may be affected by association with pupils of the Mongolian Race.

7. That prior to the passage of said resolutions, the said Board of Education of the City and County of San Francisco had established a separate public school named and called "The Oriental School," and that at the date of said resolution, passed and adopted on October 11, 1906, there were in attendance in the several public schools of the City and County of San Francisco 93 Japanese students, of whom 25 were born in the United States and 68 were born in Japan; that of said total number there were 39 Japanese between the ages of 16 and 21 years and the rest were under 16 years of age; that no separate public school has been established under the laws of the State of California or any resolution of the Board of Education

of the said City and County of San Francisco for the children of any particular descent or nationality, other than the said Oriental school; and that, except the said Japanese children, the children of all other parentage, with the exception of Mongolian or Chinese, are not compelled to attend separate schools.

8. In conformity with the above quoted resolution of the Board of Education of the City and County of San Francisco, the above named Keikichi Aoki and all of the Japanese children, subjects of the Empire of Japan, and resident in the City and County of San Francisco, and between 6 and 21 years of age, have been and are now refused admission to any of the public schools of the primary and grammar grades of the City and County of San Francisco, except the said Oriental School. Japanese subjects, and children of Japanese descent, are permitted to attend any and all public schools of the City and County of San Francisco, of all the other grades, than those of the primary and grammar grades.

9. That your Petitioner makes no charge that the said Oriental School is inferior in its provision of teachers or their competency, or its accommodations, paraphernalia and equipment, or the character of instruction therein given to schools of the same grade attended by pupils of other parentage throughout the City or County of San Francisco; but he claims and

charges, that to compel him and other children of Japanese descent to thus attend a single school, without regard to his or their residence or convenience, solely by reason of his or their race or descent, is a hardship and discrimination against him and them, and violates his and their legal rights, under the treaty hereinafter mentioned made by the United States, and the authority thereof, with the Empire of Japan and constituting the supreme law of the land.

10. That now, and for more than six months last past, children of English, German, French, Italian and other European parentage, citizens of the above named respective foreign governments and residents of the City and County of San Francisco, attend the public schools of the City and County of San Francisco generally and without discrimination based upon race or descent, and are not compelled to attend separate schools for children of foreign parentage; that no separate public school has been established by the said Board of Education of the City and County of San Francisco for the children of any parentage, other than the said Oriental school.

11. That the above named Keikichi Aoki is not an Indian child, nor is he of Mongolian or Chinese descent, but that he belongs and his ancestors have belonged to the Japanese race and nation, and he is and they have been subjects of the Empire of Japan.

12. That the said Oriental School, as established by the resolution of the said Board of Education, is situated about fourteen blocks from the said residence of the said affiant and his said child; that the said Redding Primary School is situated about six blocks from his said residence, and that the difference is two-thirds of a mile; and that, in addition to the causes hereinafter enumerated, it is a physical hardship and disadvantage for the said infant to attend the said Oriental School in its present situation, and that the said distance he would be compelled to travel, should he attend the same, to and from said school to his said residence, imposes upon him a hardship and burden, not borne or compelled to be borne by children of English, German, French, Italian and other European parentage, citizens and subjects of the above named respective governments and resident of said City and County of San Francisco.

That on the 18th day of April, 1906, and for several days following said date, a general conflagration prevailed in the City and County of San Francisco and a large portion of said City was burned and dwellings therein destroyed; that the Oriental School, referred to in the resolution herein set out, is in what is known as the burned section. At the present time there is only one Japanese, or child of Japanese descent, attending this school; that owing to the action of the

Board of Education, as hereinbefore set out, there are no Japanese children attending any other primary or grammar public schools of the City and County of San Francisco. For the purpose more clearly of showing the location of said Oriental School and the burnt district of San Francisco in which said Oriental School is situated, and also the location of the schools and the children of Japanese descent attending prior to the passage of said resolution of October 11, 1906, and also the residence of said affiant, a map is hereto attached which is a true and correct map of said City and County of San Francisco, which is marked "Exhibit A", is hereby referred to and by said reference made a part of this affidavit. That the figures and circles upon said map represent the number of Japanese pupils attending the primary and grammar schools, prior to the passage of said resolution of October 11, 1906. That the place or street where said affiant and said infant live is marked upon said map by a cross, and the school that he formerly attended before said resolution was passed into effect is marked by a star. That the other figures and circles upon said map are sufficiently explained by reference to said map; that, as it will be seen by an inspection of said map, the said Oriental School is situated in one corner of the city, and it will be extremely difficult for the said infant to attend the said Oriental School, and that

should he move to a more remote part of the city the difficulty and hardship would be increased; that by segregating the Japanese children as aforesaid, and by compelling them to attend the said Oriental School and no other, the Board of Education of said City and County of San Francisco and the said respondent did practically deprive the Japanese children, living in the said City and County of San Francisco, and particularly the said infant, of the means of education; that owing to the conflagration in San Francisco, as hereinbefore described, the conditions of transportation in said City are much impaired, and that it is more difficult for the said infant to attend the said Oriental School than it was or would have been prior to said conflagration.

13. That the United States entered into a treaty with the Empire of Japan which was concluded on November 22, 1894, the ratification of which was advised by the Senate of the United States, with amendments, February 5, 1895, and which was ratified by the President of the United States, February 15, 1895; that ratifications were exchanged March 21, 1895, and that the treaty was proclaimed March 21, 1895, and that said treaty is now in full force and effect; that said treaty provides in Article I, as follows:

The citizens or subjects of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the

territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property.

They shall have free access to the courts of justice in pursuit and defence of their rights; they shall be at liberty equally with native citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects.

In whatever relates to rights of residence and travel; to the possession of goods and effects of any kind; to the succession to personal estate, by will or otherwise, and the disposal of property of any sort and in any manner whatsoever which they may lawfully acquire, the citizens or subjects of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties, 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. The citizens or subjects of each of the Contracting Parties shall enjoy in the territories of the other entire liberty of conscience, and, subject to the laws, ordinances, and regulations, shall enjoy the right of private or public exercise of their worship, and also the right of burying their respective countrymen, according to their religious customs, in such suitable and convenient places as may be established and maintained for that purpose.

They shall not be compelled, under any pretext whatsoever, to pay any charges or taxes other or higher than those that are, or may be

paid by native citizens or subjects, or citizens or subjects of the most favored nation.

The citizens or subjects of either of the Contracting Parties residing in the territories of the other shall be exempt from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service; and from all forced loans or military exactions or contributions.

That among the rights under this treaty conferred upon the subjects of Japan, by reason of residence in the State of California, is that granted by Sec. 1662 of the Political Code which says: "Every school, unless otherwise provided by law, must be open for the admission of all children residing in the District"; and that, in view of the said Treaty and of the said section of the Political Code of California, the resolution of the Board of Education hereinbefore referred to, and the action of said board and of the said principal, respondent herein, acting in conformity with said resolution deny to the said affiant and to the said infant the same privileges, liberties and rights, as are granted to the subjects or citizens of the most favored nation; and that the same constitute a breach and violation of the terms of said treaty entered into between the United States and Japan; that the said respondent aforesaid intends to obey the said resolution of the said Board of Education, and intends to prevent the said infant from attending the said school, and intends to deny him admittance thereto.

14. That neither said affiant nor said infant has a plain, speedy or adequate remedy in the ordinary course of law.

15. Affiant refers to the statement and prayer of the United States of America hereto attached, and by said reference makes the same a part of this affidavit or petition.

16. That the questions to be presented and which are presented by this affidavit or petition involve the construction of the treaty between the United States of America and the Empire of Japan. That this case is one of great public importance, involving not only the rights of affiant and petitioner, but many other Japanese subjects residing in the State of California and residing in the said City of San Francisco. That a decision of this Court, upon the questions presented in this case, will prevent a multiplicity of suits in the lower courts of this State. That the precise questions to be presented in this case are new and have not been heretofore decided by this Court. That, for the reasons set forth in this paragraph, affiant and petitioner presents this petition and application originally to the Supreme Court of the State of California.

WHEREFORE, said affiant and petitioner prays that this Court issue its alternative writ of mandate, directing the said respondent to admit the said Keikichi Aoki to the said Redding Primary School as a pupil

in the Fourth Grade thereof, or to show cause before this Court, at the time and place to be specified in said writ, why she has not done so; and that upon the final hearing in said cause a peremptory writ of mandate issue in similar form.

MICHITSUGU AOKI.

Subscribed and sworn to before me this 17th day of January, 1907.

[SEAL]

CLEMENT BENNETT,
Notary Public in and for the City and County of San Francisco.

State of California,
City and County of San Francisco. } ss.

Keikichi Aoki being first duly sworn says that he has read the foregoing affidavit and petition and knows the contents thereof and that the same is true.

KEIKICHI AOKI.

Subscribed and sworn to before me this 17th day of January, 1907.

[SEAL]

CLEMENT BENNETT,
Notary Public.

TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA.

Comes now the United States acting through Charles J. Bonaparte, as Attorney General, and Robert T. Devlin, United States Attorney for the Northern District of California, and shows to the court:

1. That the United States and the Empire of Japan have entered into a certain treaty as set out in the accompanying affidavit or petition, which said treaty is in full force and effect.

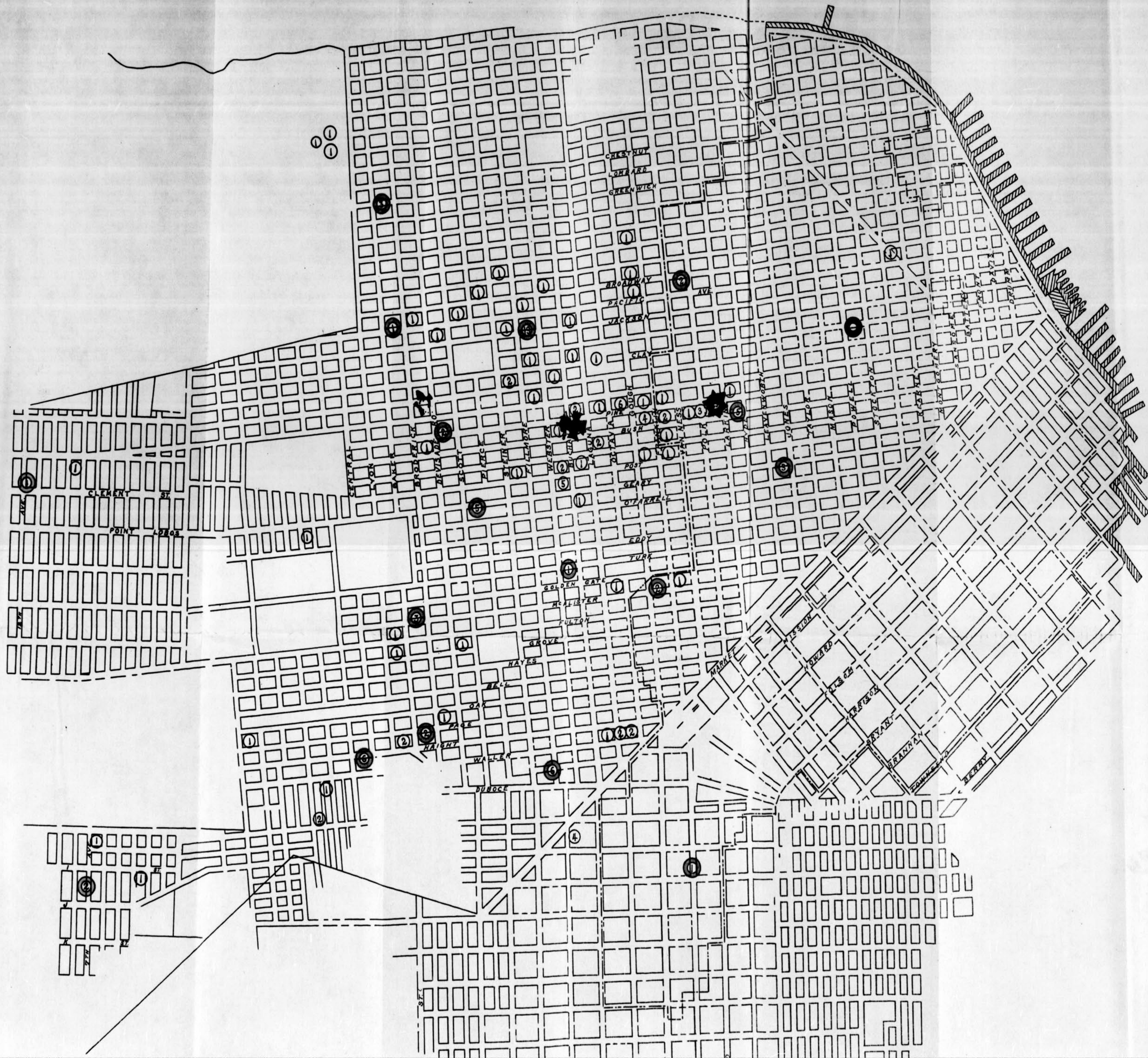
2. That the said United States has at various times made grants of land and appropriated money to the State of California for the support of the public or common schools of said State, the last provision for which was made by an Act of Congress approved June 27, 1906, of all of which various acts it prays that this Court will take judicial notice, all of which said grants and appropriations were made with the understanding and intent that the said schools should be conducted in conformity to the constitution of the United States and to all treaties made under the authority of the United States.

3. That the acts complained of in the accompanying petition are a violation of the provisions of said treaty entered into between the United States and the Empire of Japan, and that the legislation of the State of California, the resolution of the Board of

Education, and the action of respondent in said petition thereunder, are and constitute a denial to the said affiant and said infant of the same privileges, liberties and rights as are granted by the State of California and by the Board of Education of the said City and County of San Francisco to the subjects or citizens of the most favored nation; that the said United States desires to co-operate to the fullest extent allowed by law securing to the said affiant and the said infant all the privileges, liberties and rights guaranteed to him or them by said treaty, and, therefore, prays the Court that the petition of the said affiant be granted; that the United States be allowed to be made a party to this proceeding as a party beneficially interested, if such order may be made in accordance with the usage and practice of this Court, and that if, in accordance with the usage and practice of this Court, it cannot be made a party to the record, that it be permitted to appear by its proper law officers and be heard in behalf of the granting of the prayer in said petition contained.

(Sgd) CHARLES J. BONAPARTE,
Attorney General of the United States.

(Sgd) ROBERT T. DEVLIN,
United States Attorney for the Northern District of
California.



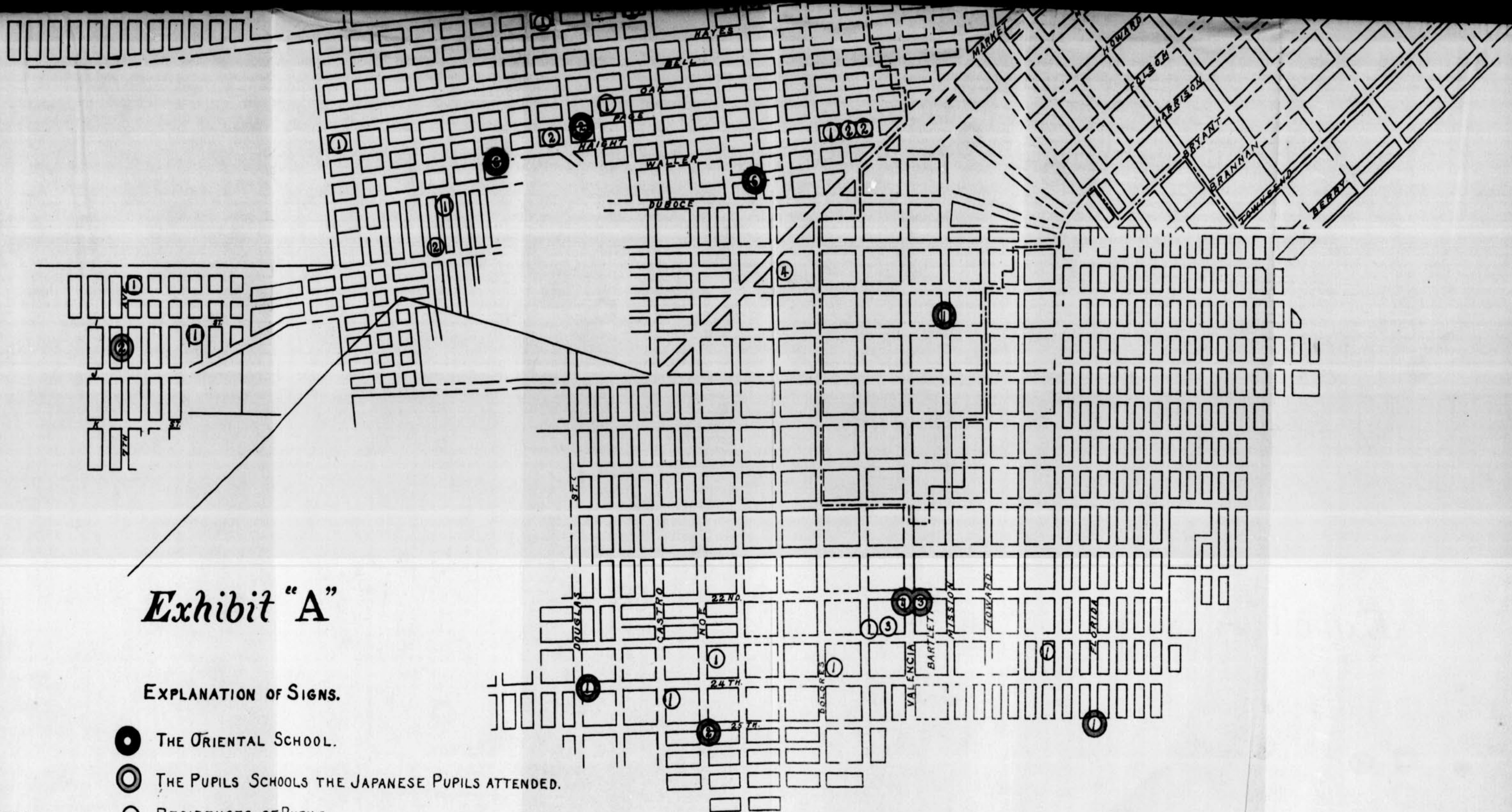


Exhibit "A"

EXPLANATION OF SIGNS.

- THE ORIENTAL SCHOOL.
- ⊙ THE PUPILS SCHOOLS THE JAPANESE PUPILS ATTENDED.
- RESIDENCES OF PUPILS.

FIGURES IN CIRCLES = NO. OF PUPILS.



Aoki Residence.

Redding Primary School.

**In the Circuit Court of the United States, Ninth Circuit,
for the Northern District of California**

United States of America.

vs.

Lawrence F. Walsh, et al.

No. 14165.

THE UNITED STATES OF AMERICA, by
CHARLES J. BONAPARTE, its Attorney General, and
ROBERT T. DEVLIN, United States Attorney for the
Northern District of California, brings this its bill against
Lawrence F. Walsh, Aaron Altman, Thomas F. Boyle and
David Oliver, Junior, as constituting the Board of Education
of the City and County of San Francisco; against Alfred
Roncovieri as Superintendent of Schools of the City and
County of San Francisco; and Thomas L. Heaton, W. B.
Howard, Arthur A. Macurda and Reginald H. Webster, as
Deputy Superintendents of Schools of said City and County
of San Francisco; and against Adolph Herbst, as Principal of
that certain school known as the Adams Cosmopolitan Gram-
mar school; and S. J. Jones, as Principal of the Agassiz Pri-
mary school; and A. Gavigan, as Principal of the Bergerot
Primary school; and A. G. Regan, as Principal of the Bernal
Grammar school; and A. Catlin, as Principal of the Buena

Vista Primary school; and Philip Prior, as Principal of the Burnett Grammar school; and E. E. Kelly, as Principal of the Bryant Primary school; and W. W. Stone, as Principal of the Clement Grammar school; and L. K. Burke, as Principal of the Columbia Grammar school; and A. E. Tiernan, as Principal of the Cooper Primary school; and C. W. Mark, as principal of the Crocker Grammar school; and A. L. Mann, as Principal of the Denman Grammar school; and W. L. Tarpy, as Principal of the Douglass Primary school; and S. H. Earle, as Principal of the Dudley Stone Primary school; and J. Saunders, as Principal of the Edison Primary school; and T. Spencer, as Principal of the Emerson Primary school; and F. Banning, as Principal of the Everett Grammar school; and C. M. Johnston, as Principal of the Fairmount Grammar school; and N. A. Wood, as Principal of the Franklin Grammar school; and Rose Goldsmith, as Principal of the Fremont Grammar school; and M. A. Scherer, as Principal of the Garfield Primary school; and Pauline Hart, as Principal of the Golden Gate Primary school; and I. E. Shaw, as Principal of the Grant Primary school; and M. A. Haswell, as Principal of the Haight Primary school; and A. E. Kellogg, as Principal of the Hamilton Grammar school; and R. Faulkner, as Principal of the Hancock Grammar school; and L. McElroy, as Principal of the Harrison Primary school; and S. J. Mann, as Principal of the Hawthorne Primary school; and N. F. Sullivan, as Principal of the Hearst Grammar school; and G. Washburn, as Principal of the Henry Durant Primary school; and James H. Simmons, as Principal of the Horace Mann

Grammar school; and A. J. Itsell, as Principal of the Hunter's Point Primary school; and C. B. Barlow, as Principal of the Irving Primary school; and James T. Hamilton, as Principal of the Irving M. Scott Grammar school; and E. Butler, as Principal of the Jackson Primary school; and A. Lyser, as Principal of the James Lick Grammar school; and A. T. Campbell, as Principal of the Jean Parker Grammar school; and F. Quinlan, as Principal of the Jefferson Primary school; W. H. Edwards, as Principal, and W. W. Stone as Acting Principal of the John Swett Grammar school; and M. J. Parolini, as Principal of the John W. Taylor Primary school; and K. F. Casey, as Principal of the Lafayette Primary school; and M. L. O'Neal, as Principal of the Laguna Honda Primary school; William A. Leggett, as Acting Principal and Vice-Principal of the Lincoln Grammar school; and E. Bartlett, as Principal of the Madison Primary school; and M. H. Walker, as Principal of the Marshall Primary school; and K. H. Crowley, as Principal of the Mission Grammar school; and A. M. Haggarty, as Principal of the Monroe Grammar school; and K. E. Brogan, as Principal of the Moulder Primary school; and E. H. Lyon, as Principal of the Noe Valley Primary school; and D. J. Delay, in charge of the Ocean House Primary school; and V. D. Heath, as Principal of the Oceanside Primary school; and A. M. Stincen, as Principal of the Pacific Heights Grammar school; and S. B. Jenkins, as Principal of the Park Primary school; and A. Dwyer, as Principal of the Peabody Primary school; and M. A. Deane, as Principal of the Redding Primary school; and M. E. Keating, as Prin-

principal of the Richmond Grammar school; and C. F. Riordan, as Principal of the Sheridan Primary school; and J. M. A. Hurley, as Principal of the Sherman Primary school; and I. E. Mills, as Principal of the South End Primary school; and W. H. DeBell, as Principal of the Spring Valley Grammar school; and K. McGrath, as Principal of the Starr King Primary school; and E. S. Code, as Principal of the Sunnyside Annex school; and M. Magner, as Principal of the Sutro Grammar school; and T. H. McCarthy, as Principal of the Washington Grammar school; and E. L. McCarthy, as Principal of the West End Primary school; and E. E. Stincen, as Principal of the Whittier Primary school; and M. E. Thomas, as Principal of the Winfield Scott Primary school; and C. R. Pechin, as Principal of the Sunnyside Grammar school; and also against each of said persons individually, all of whom are residents and citizens of the State of California, and residents and inhabitants of the Northern District thereof.

Thereupon your orator complains and shows unto your honors that:

1. That the above named Lawrence F. Walsh, Aaron Altman, Thomas F. Boyle and David Oliver, Junior, are now, and for more than six months last past have been the duly appointed, qualified and acting members of the Board of Education of the City and County of San Francisco; that Alfred Roncovieri is now, and for more than six months last past has been the duly appointed, qualified and acting Superintendent of Schools of the City and County of San Francisco; that Thomas L. Heaton, W. B. Howard, Arthur A. Macurda and

Reginald H. Webster are now and for more than six months last past have been the duly appointed, qualified and acting Deputy Superintendents of Schools of the City and County of San Francisco; that Adolph Herbst is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Adams Cosmopolitan Grammar school, situated on Eddy Street, between Van Ness Avenue and Polk Street, in the City and County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that S. J. Jones is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Agassiz Primary school, situated on Bartlett Street, near Twenty-second Street, in the City and County of San Francisco; that said school is one of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. Gavigan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Bergerot Primary school, situated on 25th Avenue, between Lake Street and Point Lobos Avenue, in the City and County of San Francisco; that said school is one of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. G. Regan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Bernal Grammar school, situated on Cortland Avenue, near Andover Street, in the City and

County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. Catlin is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Buena Vista Primary school, situated on Bryant Street, between 18th and 19th Streets, in the City and County of San Francisco; that said school is one of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that Philip Prior is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Burnett Grammar school, situated on L Street and 14th Avenue, in the City and County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. E. Kelly is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Bryant Primary school, situated on York Street, near 23rd Street, in the City and County of San Francisco; that said school is one of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that W. W. Stone is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Clement Grammar school, situated on Geary Street, between Jones and Leavenworth Streets, in the City and County of San Francisco; that said school is one of the grammar grade, and

that the said principal is the proper person to whom to make application for the admission of pupils to the same; that L. K. Burke is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Columbia Grammar school, situated on Florida Street, between 25th and 26th Streets, in the City and County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. E. Tiernan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Cooper Primary school, situated on 13th Avenue and K Street, Sunset District, in the City and County of San Francisco; that said school is one of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that C. W. Mark is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Crocker Grammar school, situated on Page Street, between Broderick and Baker Streets, in the City and County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. L. Mann is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Denman Grammar school, situated on Bush Street, between Hyde and Larkin Streets, in the City and County of San Francisco; that said school is one of the grammar grade, and that the said principal is the proper

person to whom to make application for the admission of pupils to the same; that W. L. Tarpy is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Douglass Primary school, situated on the corner of 19th Street and Collingwood Street, in the City and County of San Francisco; that said school is of the primary grade, and that said principal is the proper person to whom to make application for the admission of pupils to the same; that S. H. Earle is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Dudley Stone Primary school, situated on Haight Street, between Masonic and Central Avenues, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for admission of pupils to the same; that J. Saunders is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Edison Primary school, situated on the corner of Church and Hill Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for admission of pupils to the same; that T. Spencer is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Emerson Primary school, situated on Pine Street, between Scott and Devisadero Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the

same; that F. Banning is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Everett Grammar school, situated on Sanchez Street, between 16th and 17th Streets, in the City and County of San Francisco; that said school is of the Grammar grade, and that the said principal is the proper person to whom to make application for admission of pupils to the same; that C. M. Johnston is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Fairmount Grammar school, situated on Chenery Street, near Randall Street, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that N. A. Wood is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Franklin Grammar school, situated on 8th Street, near Harrison Street, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that Rose Goldsmith is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Fremont Grammar school, situated on McAllister Street, between Broderick and Baker Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. A. Scherer is now and for more than six

months last past has been the duly appointed, qualified and acting principal of the Garfield Primary school, situated on Union Street, between Kearny and Montgomery Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that Pauline Hart is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Golden Gate Primary school, situated on Golden Gate Avenue, between Scott and Pierce Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that I. E. Shaw is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Grant Primary school, situated on Pacific Avenue, between Broderick and Baker Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. A. Haswell is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Haight Primary school, situated on Mission Street, between 25th and 26th Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. E. Kellogg is now and for more than six

months last past has been the duly appointed, qualified and acting principal of the Hamilton Grammar school, situated on Geary Street, between Scott and Pierce Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that R. Faulkner is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Hancock Grammar school, situated on Filbert Street, between Taylor and Jones Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that L. McElroy is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Harrison Primary school, situated at Bay View and Flora Street, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that S. J. Mann is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Hawthorne Primary school, situated on Shotwell Street, between 22nd and 23rd Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that N. F. Sullivan is now and for more than six months last past has been the duly appointed,

qualified and acting principal of the Hearst Grammar school, situated on the corner of Herman and Fillmore Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that G. Washburn is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Henry Durant Primary school, situated on Turk Street, between Buchanan and Webster Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that James H. Simmons is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Horace Mann Grammar school, situated on Valencia Street, between 22nd and 23rd Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. J. Itsell is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Hunter's Point Primary school, situated at Hunter's Point, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal in charge is the proper person to whom to make application for the admission of pupils to the same; that C. B. Barlow is now and for more than six months last past has been the duly appointed, qualified and acting principal

of the Irving Primary school, situated on Broadway, between Sansome and Montgomery Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that James T. Hamilton is now and for more than a month last past has been the duly appointed, qualified and acting principal of the Irving M. Scott Grammar school, situated on Tennessee Street, between 22nd and 23rd Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. Butler is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Jackson Primary school, situated on Oak Street, between Stanyan and Shrader Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. Lyser is now and for more than six months last past has been the duly appointed, qualified and acting principal of the James Lick Grammar school, situated on the corner of 25th Street and Noe Street, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. T. Campbell is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Jean Parker

Grammar school, situated on Broadway, between Powell and Mason Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that F. Quinlan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Jefferson Primary school, situated on Bryant Street, between 6th and 7th Streets, in the City and County of San Francisco; that the said school is of the primary grade, and that the said principal is the proper person to whom to make application for admission of pupils to the same; that W. H. Edwards is now and for more than six months last past has been the duly appointed and qualified principal, and W. W. Stone is now and for more than six months last past has been the acting principal, of the John Swett Grammar school, situated on McAllister Street, between Gough and Franklin Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said acting principal is the proper person to whom to make application for the admission of pupils to the same; that M. J. Parolini is now and for more than six months last past has been the duly appointed, qualified and acting principal of the John W. Taylor Primary school, situated on Sunnydale Avenue and Cora Street, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that K. F. Casey is now and for more than six

months last past has been the duly appointed, qualified and acting principal of the Lafayette Primary school, situated on Greenwich Street, near Webster Street, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. L. O'Neal is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Laguna Honda Primary school, situated on Seventh Avenue between I and J Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that William A. Leggett is now and for more than one month last past has been the acting principal of the Lincoln Grammar school, situated on Harrison Street, near Fourth, in the City and County of San Francisco; that said school is of the grammar grade, and that the said acting principal is the proper person to whom to make application for the admission of pupils to the same; that E. Bartlett is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Madison Primary school, situated on Clay Street, between Walnut and Laurel Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. H. Walker is now and for more than six months last past has been the duly appointed, qualified

and acting principal of the Marshall Primary school, situated on Julian Avenue, between 15th and 16th Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that K. H. Crowley is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Mission Grammar school, situated on Mission Street, between 15th and 16th Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. M. Haggarty is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Monroe Grammar school, situated on China Avenue and London Street, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that K. E. Brogan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Moulder Primary school, situated at the corner of Page and Gough Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. H. Lyon is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Noe Valley Primary

school, situated at the corner of 24th and Douglass Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that D. J. Delay is now and for more than six months last past has been in charge of the Ocean House Primary school, corner of Corbett Road and Ocean Avenue, in the City and County of San Francisco; that said school is of the primary grade, and that the said person in charge is the proper person to whom to make application for the admission of pupils to the same; that V. D. Heath is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Oceanside Primary school, situated on 48th Avenue, between I and J Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. M. Stincen is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Pacific Heights Grammar school, situated on Jackson Street, between Webster and Fillmore Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that S. B. Jenkins is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Park Primary school, situated on Sixth Avenue, between B and C Streets,

in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that A. Dwyer is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Peabody Primary school, situated on Sixth Avenue, between Clement and California Streets, in the City and County of San Francisco; that the said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. A. Deane is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Redding Primary school, situated on Pine Street, between Larkin and Polk Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. E. Keating is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Richmond Grammar school, situated on First Avenue, near Point Lobos Avenue, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that C. F. Riordan is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Sheridan Primary school, situated on Minerva Street, near Plymouth Avenue, Ocean View, in the

City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that J. M. A. Hurley is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Sherman Primary School, situated on Union Street, between Franklin and Gough Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that I. E. Mills is now and for more than six months last past has been the duly appointed, qualified and acting principal of the South End Primary school, situated on Somerset Street between Felton and Burrows Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that W. H. DeBell is now and for six months last past has been the duly appointed, qualified and acting principal of the Spring Valley Grammar school, situated on Broadway, between Polk and Larkin Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that K. McGrath is now and for six months last past has been the duly appointed, qualified and acting principal of the Starr King Primary school, situated on San Bruno Avenue, between 25th and 26th Streets, in the City

and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. S. Code is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Sunnyside Annex, situated at 115 Flood Avenue, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that C. R. Pechin is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Sunnyside Grammar school, situated on San Jose and Joost Avenues, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. Magner is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Sutro Grammar school, situated on 12th Avenue, between Clement and California Streets, in the City and County of San Francisco; that said school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that T. H. McCarthy is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Washington Grammar school, situated on Washington Street, between Mason and Taylor Streets, in the City and County of San Francisco; that said

school is of the grammar grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. L. McCarthy is now and for more than six months last past has been the duly appointed, qualified and acting principal of the West End Primary school, situated at 5630 Mission Street, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that E. E. Stincen is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Whittier Primary school, situated on Alma Street, between Cole and Shrader Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same; that M. E. Thomas is now and for more than six months last past has been the duly appointed, qualified and acting principal of the Winfield Scott Primary school, situated on Lombard Street, between Baker and Broderick Streets, in the City and County of San Francisco; that said school is of the primary grade, and that the said principal is the proper person to whom to make application for the admission of pupils to the same.

2. That the said complainant entered into and made and concluded a treaty with the Empire of Japan, which said treaty was concluded November 22, 1894, the ratification of which was advised by the Senate with amendments February 5, 1895, was ratified by the President February 15, 1895; rati-

fications of which were exchanged March 21, 1895, and which was proclaimed March 21, 1895, and ever since has been and now is in full force and effect; that said treaty in Article 1 provides as follows:

The citizens or subjects of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property.

They shall have free access to the Courts of Justice in pursuit and defense of their rights; they shall be at liberty equally with native citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects.

In whatever relates to rights of residence and travel; to the possession of goods and effects of any kind; to the succession to personal estate, by will or otherwise, and the disposal of property of any sort and in any manner whatsoever which they may lawfully acquire, the citizens or subjects of each Contracting Party shall enjoy in the territories of the other the same privileges, liberties, 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. The citizens or subjects of each of the Contracting Parties shall enjoy in the territories of the other entire liberty of conscience, and, subject to the laws, ordinances, and regulations, shall enjoy the right of private or public exercise of their worship, and also the right of burying their respective countrymen, according to their religious customs, in such suitable and convenient places as may be established and maintained for that purpose.

They shall not be compelled, under any pretext whatsoever, to pay any charges or taxes other or higher than those

that are, or may be paid by native citizens or subjects, or citizens or subjects of the most favored nation.

The citizens or subjects of either of the Contracting Parties residing in the territories of the other shall be exempt from all compulsory military service whatsoever, whether in the army, navy, national guard, or militia; from all contributions imposed in lieu of personal service; and from all forced loans or military exactions or contributions.

That your orator refers to all of the other articles and provisions of said treaty and also to the various other treaties antedating the same made between the complainant and the said Empire of Japan, and ask that the same be treated and considered as a part of this bill without the necessity or inconvenience of setting the same out at length.

3. That the State of California provides for the establishment and maintenance of a public school system, both by constitutional provisions and by statutes made pursuant thereto for the purpose of carrying into effect said constitutional provisions; that the provisions of the Constitution of the State of California upon the subject are found in Article 9 of said Constitution and are as follows:

Sec. 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Sec. 2. A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

Sec. 3. A Superintendent of Schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; *provided*, that the Legislature may authorize two or more counties to unite and elect one Superintendent for the counties so uniting.

Sec. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons, who may have died without leaving a will or heir, and also such per cent as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

Sec. 5. The Legislature shall provide for a system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

Sec. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority. The entire revenue derived from the State school fund and from the general State school tax shall be applied exclusively to the support of the primary and grammar school; but the Legislature may authorize and cause to be levied a special State school tax for the support of high schools and technical schools, or either of such schools, included in the public school system, and all revenue derived from such special tax shall be applied exclusively to the support of the schools for which such special tax shall be levied. (Amendment adopted November 4, 1902).

Sec. 7. The Governor, the Superintendent of Public Instruction, the President of the University of California, and the professor of pedagogy therein, and the principals of the State normal schools shall constitute the State Board of Education, and shall compile, or cause to be compiled, and adopt, a uniform series of text-books for use in the common schools throughout the State. The State Board may cause such text-books, when adopted, to be printed and published by the Superintendent of State Printing, at the State Printing Office, and, when so printed and published, to be distributed and sold at the cost price of printing, publishing, and distributing the same. The text-books so adopted shall continue in use not less than four years; and said State Board shall perform such other duties as may be prescribed by law. The Legislature shall provide for a Board of Education in each county in the State. The County Superintendents and the County Boards of Education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions.

Sec. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

Sec. 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the Organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its regents, and in the administration of its affairs; *Provided*, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the

several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics), to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

Sec. 10. The trusts and estates created for the founding, endowment, and maintenance of the Leland Stanford Junior University, under and in accordance with "An Act to advance learning, etc.," approved March ninth, eighteen hundred and eighty-five, by the endowment grant executed by Leland Stanford and Jane Lathrop Stanford on the eleventh day of November, A. D. eighteen hundred and eighty-five, and recorded in liber eighty-three of deeds, at page twenty-three, *et seq.*, records of Santa Clara County, and by the amendments of such grant, and by gifts, grants, bequests, and devises supplementary thereto, and by confirmatory grants, are permitted, approved, and confirmed. The Board of Trustees of the Leland Stanford Junior University, as such, or in the name of the institution, or by other intelligible designation of the trustees or of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest, for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests, and devises supplementary thereto. The Legislature, by special act, may grant to the trustees of the Leland Stanford Junior University corporate powers and privileges, but it shall

not thereby alter their tenure, or limit their powers or obligations as trustees. All property now or hereafter held in trust for the founding, maintenance, or benefit of the Leland Stanford Junior University, or of any department thereof, may be exempted by special act from State taxation, and all personal property so held, the Palo Alto farm as described in the endowment grant to the trustees of the university, and all other real property so held and used by the university for educational purposes exclusively, may be similarly exempted from county and municipal taxation; *Provided*, that residents of California shall be charged no fees for tuition unless such fees be authorized by act of the Legislature.

Sec. 11. All property now or hereafter belonging to "The California School of Mechanical Arts," an institution founded and endowed by the late James Lick to educate males and females in the practical arts of life, and incorporated under the laws of the State of California, November twenty-third, eighteen hundred and eighty-five, having its school buildings located in the City and County of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the Governor. The Legislature may modify, suspend, and revive at will the exemption from taxation herein given. (New section; adopted November 6, 1900).

Sec. 12. All property now or hereafter belonging to the "California Academy of Sciences," an institution for the advancement of science and maintenance of a free museum, and chiefly endowed by the late James Lick, and incorporated under the laws of the State of California, January sixteenth, eighteen hundred and seventy-one, having its buildings located in the City and County of San Francisco, shall be exempt from taxation. The trustees of said institution must annually report their proceedings and financial accounts to the Governor. The Legislature may modify, suspend, and revive at will the exemption from taxation herein given.

4. That the public school system of the State of California is supported and maintained partly by moneys derived by means of taxation upon property in the State of California

and partly by money arising from the sales of lands donated by the Complainant to the State of California, and by appropriations of money made by complainant to said State, and in this behalf your orator shows that by statute of the said United States of America, complainant herein, entitled "An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," approved March 3, 1853; that said United States did grant to the State of California Sections 16 and 36 of all the public lands in said State, whether surveyed or unsurveyed, for the purpose of public schools in each township, and it also by said act granted the said State the quantity of two entire townships, or 72 sections, for the use of a seminary of learning, said lands to be selected by the Governor of the State of California, or any person he might designate for that purpose, in legal subdivisions of not less than a quarter section of any of the unsold, unoccupied, and unappropriated public lands therein, subject to the approval of the Secretary of the Interior and to be disposed of as the Legislature shall direct; and by said act also did convey to the State of California the quantity of 10 entire sections of land for the purpose of erecting public buildings of that State; said lands to be selected by the Governor of the State of California or any person he might designate for that purpose, in legal subdivisions of not less than a quarter section of any unsold, unoccupied or unappropriated public lands in that State, and subject to the approval of the Secretary of the Interior; that pursuant to the terms of said grant there were conveyed to

the State of California lands consisting of Sections 16 and 36, public lands of said State the number of 5,610,702 acres, and that pursuant to the provisions of said act the 72 sections granted to the State of California for the use of seminary of learning have been duly selected by the Governor of the State in accordance with the terms of said act, and likewise the 10 sections of land for the purpose of erecting public buildings of said State have been selected by the Governor in accordance with the provisions of said act; that the State of California has provided for the sale of said lands and for using the money derived from the sale thereof, for the support of public schools of said State, and by Section 415 of the Political Code of said State has provided that the endowment of the University of the State of California, among other things shall consist of the proceeds of the sale of the 72 sections of land granted to the State for a seminary of learning, and also the proceeds of the 10 sections of land granted to the State for public buildings, and has provided in Section 3494 of the Political Code of said State and other sections following the same for the sale of said school lands granted the State of California for school purposes. An act was also passed by the Congress of the United States entitled "An Act donating public lands to the several States and territories which may provide colleges for the benefit of agriculture and the mechanic arts," which was approved July 5, 1862, and which did grant to the several States including California, an amount of public land to be apportioned to each State in a quantity equal to thirty thousand acres for each senator and representative in Congress to

which the States were respectively entitled by the apportionment under the census of 1860. Said act provided that all moneys derived from the sale of the lands aforesaid by the States shall be invested and shall constitute a perpetual fund, the capital of which shall remain forever undiminished and the interest of which shall be inviolably apportioned by each State which may take and claim the benefit of said act to the support, endowment and maintenance of at least one college where the leading object shall be without excluding other scientific and classical studies, to teach such branches of learning as are related to agriculture and the mechanic arts. That pursuant to the terms of such act there were granted to the State of California 150,000 acres.

That the said United States has by various other acts, unnecessary here to set out, conveyed and granted to the State of California additional lands in lieu of the 16th and 36th sections by reason of the inability of the State of California to obtain title thereto, which said acts are generally known as the lieu land acts or indemnity acts, the object of which was by the grant of other lands to the State of California, to supply any deficiency that there might be in the full grant of the 16th and 36th sections as hereinbefore described. That likewise the said United States of America, complainant herein, has by an Act entitled "An Act granting to the State of California five per centum of the net proceeds of the cash sales of public lands in said State," approved June 27, 1906, granted to the said State of California five per centum of the net proceeds of the cash sales of the public lands which have

been heretofore made by the United States since the admission of said State, or may hereafter be made in said State to aid in the support of the public or common schools of said State, which said act is in the words and figures following, to wit:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of California five per centum of the net proceeds of the cash sales of the public lands which have been heretofore made by the United States since the admission of said State, or may hereafter be made in said State, to aid in the support of the public or common schools of said State; and the sum of money necessary to pay said five per centum to said State is hereby appropriated out of any money in the treasury not otherwise appropriated.

That in conformity to the provision of said act, approved June 27, 1906, the following amounts have been certified to the Treasury of the United States for payment of the claims of California, to wit:

Period.	Amount Certified.	No. Aud. Settlement.
Sept. 9, 1850,		
to		
June 30, 1862,	\$ 2,559.02	30809
July 1, 1862,		
to		
June 30, 1872,	233,205.25	30989
July 1, 1872,		
to		
June 30, 1882,	192,507.34	31019
July 1, 1882,		
to		
June 30, 1892,	379,847.50	—
	<u>\$808,119.11</u>	

And that of the said amounts so certified there has been paid the State of California the sum of \$428,271.61, and the balance will be paid said State of California in due course of administration, and that in addition to the amounts above named there is a further sum to be paid for the period from July 1, 1892, to June 30, 1906, which said account is in course of preparation and when prepared and duly certified will be ordered paid and paid as the amounts hereinabove enumerated; that the United States of America does not maintain a school system as such in the State of California, but has supported and will support, according to the acts hereinbefore set out, the school system established by the State of California, and it refers to all of said acts and asks the Court to take notice thereof without the necessity or inconvenience of setting the same out at length.

And the complainant shows and submits to the Court that the liberal provision so made by it in furtherance of education in California could be rightly made and was made in fact only with the understanding and intent that all schools or other institutions to be benefited thereby would be conducted in conformity with the Constitution of the United States and with all treaties made by authority of the United States, of which treaties the treaty so as aforesaid made by and by the authority of the United States with the Empire of Japan is one and, as such, constitutes the supreme law of the land.

5. That pursuant to the provisions of the Constitution of the State of California hereinbefore set out, the State of

California has passed certain laws for the government, management, and control of the schools established by it, has thereby provided the method of governing such schools, the classification of teachers, and the qualifications for the admission of pupils, the length of the school term, and made other provisions necessary and proper for the purpose of maintaining a school system in compliance with the provisions of said constitution; that throughout the State of California the State is divided into school districts, but it is provided that every city or incorporated town of said State, unless subdivided by the legislative authority thereof, shall constitute a separate school district which shall be governed by the Board of Education, or Board of School Trustees of such city or incorporated town; that the City and County of San Francisco is an incorporated town, and that the same constitutes a separate school district, and that it has not been subdivided by the legislative authority thereof; that the said City and County of San Francisco is governed by a charter which was voted for and ratified by the qualified voters of said city and county at a special election held therein for that purpose on the 26th day of May, 1898, and that the same was duly ratified by the Legislature of the State of California on the 26th day of January, 1899, and that by Article 7 of said charter the government of public schools and libraries is provided for; that by said Article it is provided that the school department of San Francisco shall be under the control and management of a Board of Education, composed of four school directors, who shall be appointed by the Mayor and that the school

department shall comprise all the public schools of said city and county and shall include primary and grammar schools, and may include evening, deportment, technical, cosmopolitan, high and normal schools, and the said Board of Education in addition to the powers conferred by the General Laws of the State of California, have power to establish and maintain public schools and to change, modify, consolidate or discontinue the same as the public welfare may require; to establish and enforce all necessary rules and regulations for the government and efficiency of the schools, and for carrying into effect the school system; to remedy truancy; and to compel attendance at school of children between the ages of six and fourteen years, who may be found idle in public places during school hours; and also have power to receive and manage property or money acquired by bequest or donation in trust for the benefit of any school, educational purpose or school library; to carry into effect the terms of any bequest not in conflict with the General Laws or of the said charter. The said charter also provides for the appointment of a Superintendent of Schools and in addition to the duties imposed by the general laws of the State, it is by said charter made the duty of the Superintendent to observe and enforce all rules and regulations of the Board of Education and see that no religious or sectarian books or teachings are allowed in the schools; and to visit and examine with the assistance of his deputies all the schools at least twice a year and determine their standing and qualification; to recommend rules for the promotion of pupils from grade to grade, from school to school, and for

the transfer and graduation of pupils. The said charter of the City and County of San Francisco also provides that the Board of Education shall on or before the first Monday in April of each year report to the supervisors of said City and County mentioned in said charter, an estimate of the amount which shall be required during the ensuing fiscal year for the purpose of meeting current annual expenses of public instruction in the city and county, specifying the amount required for supplies to be furnished pupils, including text-books for indigent children; for purchasing and procuring sites; for leasing rooms or erecting buildings; for furnishing, fitting up, altering, enlarging and repairing buildings; for the support of schools organized since the last annual apportionment; for the salary of the school directors, superintendent, deputy superintendents, and all other persons employed in the school department, and for other expenditures necessary for the administration of the public school system; and by said charter it is also provided that the supervisors of the City and County of San Francisco at the time and in the manner of levying and collecting other city and county taxes for the said City and County of San Francisco, shall levy and cause to be collected for the common school fund a tax which added to the revenue derived from other sources, shall produce an amount of money which shall not exceed \$32.50 for each pupil in attendance during the preceding fiscal year, as ascertained and reported by the Board of Education; and said charter also provides that in case of extreme emergency or great calamity, such as disaster from fire, riot, earthquake or public enemy, the Board

of Education may, with the approval of the Mayor and Supervisors, incur extraordinary expenditures in excess of the annual limit provided for in such charter, for the repair and construction and furnishing of school-houses in place of those so injured or destroyed. The said charter also provides that the Supervisors may, by ordinance, cause to be transferred to the common school fund, from moneys in any fund not otherwise appropriated, sufficient money to liquidate such expenditures, and provide for the same in the next tax levy of the city and county; that the said taxes so levied and collected are levied upon all property situated in the City and County of San Francisco, including among others, property of Japanese subjects and citizens residing in said City and County of San Francisco and owning property therein.

6. In addition to the revenue provided by taxation upon the property of all residents of the City and County of San Francisco or persons owning property therein according to the provisions of the said charter, the State of California has provided by Section 443 of the Political Code of said State, that the State Comptroller of that State must between the 10th day of August and the first day of September of each year, estimate the amount necessary to raise the sum of seven dollars for each census child between the ages of five and seventeen years in the said State of California, which shall be the amount necessary to be raised by *ad valorem* tax for school purposes during the year, which amount the comptroller must immediately certify to the State Board of Equalization, and by Section 1634 of said code, of said State, it is made the

duty of the census marshals to take annually between the 15th and 30th days of April, inclusive, a census of all children including children of Indian parents who pay taxes or who are not yet living in the tribal relation under 17 years of age who are residents of his district on the said 15th day of April, and to report the results of his labors to the Superintendent of Schools (or to the Board of Education in cities), on or before the 10th day of May in each year; and by Section 1636 of said code it is provided that his report must be made under oath and must show the number, age, sex, color, name and nationality of the children listed, and the number of those who from deafness are unable to hear ordinary conversation; and by 1622 of the same code, it is provided that all State school moneys, except the 10 per cent reserved for District school library purpose be applied exclusively to the payment of teachers of primary and grammar schools; by Section 435 of the same code it is provided that the comptroller of the State of California must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes, and he must draw his warrant upon the State Treasurer in favor of any county treasurer, whenever such county treasurer presents with his indorsement an order drawn by the Superintendent of County Instruction in favor of such county. By Section 1532 of the same code, subdivision four, it is provided that the Superintendent of Public Instruction of the State of California, shall apportion out of the State school fund to every county and every city and county two hundred

and fifty dollars for every teacher determined and assigned to it on school census by the county or city and county school superintendent for the next preceding year and after thus apportioning two hundred and fifty dollars on teacher or census basis, he shall apportion the balance of the State school fund to the several counties or cities and counties according to their average daily attendance as shown by the reports of the county or city and county school superintendents of the next preceding school year. Your orator further shows that there are other provisions of the laws of California relating to the raising of revenue by taxes levied upon all property situated within the State of California whether owned by citizens thereof or by citizens and subjects of foreign nations, and also other provisions relative to the distribution of the school fund raised and maintained in the State of California; the investment of the school moneys and distribution of the same which it is unnecessary to set out at length, but of which your orator prays the Court to take judicial notice.

7. That in addition to the primary and grammar schools maintained by the State of California and by the several legal subdivisions thereof, the laws of California also provide for the establishment and maintenance of high schools, of the State university and of normal schools, and that a number of high schools have been established and are now maintained by general taxation in the City and County of San Francisco, and that a State university is established and maintained in the State of California, and likewise a number of normal schools; the statutes relating to all of which your

orator specifically refers to and asks the Court to consider the same without the necessity of setting the same out at length; and that said school system forms one continuous chain from the primary school to the State university; it being, however, provided that the public schools of California other than those supported exclusively by the State shall be classed as high schools, technical schools, and grammar and primary schools, including kindergarten classes.

8. That the State of California by law has prescribed qualifications for admission to the public schools and among other things it is provided by Section 1662 of the Political Code of the State of California as follows:

That the Board of Education or school trustees shall have power to establish separate schools for Indian children and for children of Mongolian or Chinese descent. When such separate schools are established Indian, Chinese or Mongolian children must not be admitted into any other school.

That the State of California has by legislation provided at different times the qualifications for admission to the public schools. That in the school law of California which became operative in 1870, it was provided that every school, unless otherwise provided by special law, should be open to the admission of all white children between five and twenty-one years of age residing in that school district, and also that the education of children of African descent and Indian children should be provided for in separate schools. This provision relating to separate schools for children of African descent was by the Supreme Court of the State of California

declared, as to children born in the United States and citizens thereof, to be valid and not to be in conflict with any provision either of the Constitution of the United States or the State of California. This section was afterwards designated as Section 1662 of the Political Code of the State of California. Subsequently by an Act of the Legislature of the State of California, approved April 7, 1880, this section was amended by striking out the word "white" and by providing that every school unless otherwise provided by law should be open for the admission of all children between six and twenty-one years of age residing in the district. Subsequently to the passage of this act application was made for the admission of a child born in San Francisco of Chinese parents to be admitted to one of the public schools of the City and County of San Francisco, and it was held by the Supreme Court of the State of California that under the legislation then existing and under Section 1662 of the Political Code, in the form in which it then was, that said child was entitled to be admitted to the public schools, said decision having been rendered by the Supreme Court of California on the third day of March, 1885. Thereafter, on the 12th day of March, 1885, the Legislature of the State of California amended said Section 1662 of the Political Code by providing that trustees of school districts shall have the power to establish separate schools for children of Mongolian or Chinese descent, and that when such separate schools were established Chinese or Mongolian children must not be admitted into any other schools. This section was again amended by an Act of

Legislature of the State of California, by an act approved March 20, 1891. That said section was again amended March 23, 1893, and again on March 5, 1903, so that at the present time, and at the date of the passage of the resolution by the Board of Education of San Francisco herein described, it read as follows:

Sec. 1662. Who may be admitted to. Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty-one years of age residing in the district, and the board of school trustees, or city board of education, have power to admit adults and children not residing in the district, whenever good reasons exist therefor. Trustees shall have the power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases, and also to establish separate schools for Indian children and for children of Mongolian or Chinese descent. When such separate schools are established, Indian, Chinese, or Mongolian children must not be admitted into any other school; provided, that in cities and towns in which the kindergarten has been adopted or may hereafter be adopted as part of the public primary schools, children may be admitted to such kindergarten classes at the age of four years; and provided further, that in cities or school districts in which separate classes have been or may hereafter be established, for the instruction of the deaf, children may be admitted to such classes at the age of three years.

That the object of the said amendment to said Section 1662 providing for the establishment of separate schools for children of Mongolian or Chinese descent was to provide separate schools for those who came from the various parts of China, whether the same were known by the names indicating the province from which they came or by the words "Chinese" or "Mongolian." That in the year in which the

amendment aforesaid was made providing for separate schools for children of Chinese or Mongolian descent and for several years both preceding and succeeding, there were a large number of Chinese in the State of California who came principally from the City of Canton and the province of Kwang-Tung, and there were a few others in the State of California from the dependency of Mongolia, which is a part of the Empire of China. That at that time there was a considerable agitation in the State of California to secure by legislation and treaty the exclusion of Chinese laborers from the State of California, and to decrease as rapidly as possible the Chinese population therein. At the time of the passage of said amendment the word "China" or "Chinese" was a word of indefinite signification, because China included not only China with its various provinces but also the dependencies of Manchuria, Mongolia, and Thibet. That China proper is divided into nineteen provinces as follows:

Chih-li, Shan-tung, Skan-se, Ho-nan, Keang-soo, Gan-hwuy, Keang-se, Che-keang, Fuh-keen, Hoo-pih, Hoo-nan, Shen-se, Kan-suh, Sze-chuen, Kwang-tung, Kwang-se, Kwei-chow, Yun-nan, and Shing-king in Manchuria.

And that the Chinese in the State of California came principally from one or two provinces, and a great majority of them came, as stated above, from the town of Canton, known also by the name of Kwang-chow-foo and neighboring settlements. That at said time there were comparatively few Japanese, or persons of Japanese descent, in the State of California, and it was not intended by said amendment to include

Japanese or children of Japanese descent. That the Fatherland proper of the Mongolians or Mongols is in Mongolia, a country forming part of the Empire of China, and, so as aforesaid, constituting a dependency thereof, stretching from Siberia in the North towards the great wall of China in the South, and from Dauria and Manchuria in the East to the Altai and the sources of the Irtysh, Thian-shan and East Turkestan in the West. The Mongolians are divided into three branches known as the East Mongols, West Mongols and Buriats. Then again of these the East Mongols are subdivided into the Thalkhas and Shara Mongols and the Shiraigol. The West Mongols are also divided into Kalmuks, Oelod and Oirad. There are some other divisions or peoples having the external characteristics of Mongols, and some others connected with them which are known as the Hazara and as the four Amak tribes. The said Mongolians or Mongols have a language of their own and for convenience the dialects of the same may be divided into three classes corresponding to the three full divisions of their race, as given above, to wit, East Mongolian, or Mongolian proper, West Mongolian, or Kalmuks, and lastly Buriatic. That the natives and subjects of Japan are in no manner either Chinese or Mongolian, but constitute a separate and distinct race, and although frequent attempts have been made by the Mongols or Mongolians to conquer Japan said attempts have always been failures. In the year 1281 the Japanese repulsed an invasion undertaken by the Mongols, which said invading force consisted of Chinese, Mongolian and Korean tribes. They de-

scended upon the coast of Kiushiu where several battles took place and the Japanese attacked and destroyed the invaders, and since said date no attempt has been made by the Mongols to invade Japan. Many centuries before and ever since the said date Japan has been a nation separate and distinct from the other nations of the earth and differing widely in race, language and literature from the Mongols and also from the Chinese. Your orator therefore shows this Honorable Court that both by the object to be attained by the amendment of said section of the Political Code, by the condition of affairs existing in the State of California, by the meaning of the term, and by historical events, said section of the Political Code does not authorize the creation of separate schools for Japanese or children of Japanese descent.

9. That this interpretation of the said statute is sustained and rendered the more reasonable by the contemporaneous and unbroken construction placed upon the same by the officers entrusted with its administration from the time of its enactment until October 11th last past; for throughout the State of California (with the exception of the Oriental school as in this bill of complaint hereinafter described) separate schools are not and never have been provided for Japanese children or children of Japanese descent, and only recently, i. e. since the lastly above mentioned date, have the numbers of the Board of Education of the said City and County of San Francisco endeavored to compel Japanese children and children of Japanese descent to attend a public school attended only by such Japanese children, Chinese

children and Korean children; although a separate school has been maintained for Chinese and for Mongolian children in the City of San Francisco for many years. That, in fact, the said so-called "Oriental School" was established in 1885 and during all the twenty-one years which elapsed thereafter and until October 11th, 1906, no attempt was made to compel Japanese children to attend the same, but the above mentioned law was consistently construed as having no application to children of Japanese descent. That the said Board of Education now claims, however, that said section of the Political Code does relate to Japanese children, and has determined that all children born in the Empire of Japan and qualified to enter the public schools of California shall not attend the public schools generally, but if they desire the benefits of an education provided by the laws of California for American children and children of English, French, German, Italian and other parentage, they, the said Japanese children, must attend the Oriental school hereinafter described. That for the purpose of effecting a separation of the Japanese children from the children of other nationalities living in the City and County of San Francisco and State of California, the Board of Education of the City and County of San Francisco did on the 6th day of May, 1905, pass and adopt a resolution in the following words:

"Resolved, That the Board of Education is determined in its efforts to effect the establishment of separate schools for Chinese and Japanese pupils, not only for the purpose of relieving the congestion at present prevailing in our schools, but also for the higher end that our children should not be placed

in any position where their youthful impressions may be affected by association with pupils of the Mongolian race."

And again on the 11th day of October, 1906, the same Board passed and adopted a resolution in the words following:

"Resolved, That in accordance with Article X, section 1662, of the school law of California, principals are hereby directed to send all Chinese, Japanese, or Korean children to the Oriental Public School, situated on the south side of Clay street, between Powell and Mason Streets, on and after Monday, October 15, 1906."

That said resolutions have never been repealed, modified or amended and are now in full force and effect.

On the 11th day of October, 1906, the date of the passage of the resolution above referred to there were attending the public schools of the City of San Francisco 93 Japanese children distributed among 23 schools, of whom 68 were born in Japan and 25 in the United States. That the said 68 pupils born in the Empire of Japan and subjects of the Empire of Japan, are entitled to the rights and privileges guaranteed by the treaty between the United States and Japan hereinbefore referred to; and among the said rights, therein referred to as "rights of residence," is evidently included the right to attend the public schools of California on the same footing and with the same privileges and advantages as are accorded to citizens or subjects of the most favored nation, the laws of California expressly granting to all children resident within each District the right to attend every school within the same, except as otherwise provided by law, but, in violation of their said right and of the said treaty, they were compelled by the

said defendants to leave the schools they had been theretofore attending and were denied admission into said schools and were compelled to attend the said Oriental school described in said resolution, or be deprived of the benefits of an education as provided by the State of California. That on the date of the passage of said resolution, to wit, October 11, 1906, the following pupils born in the Empire of Japan and subjects thereof were attending the following named schools, to wit:

George Tsukamoto, a boy, age 13 years, who attended the fourth grade of the Agassiz Primary school hereinbefore described.

Hideo Okamoto, a boy, age twelve years, who attended the fourth grade of the Columbia Grammar school, hereinbefore described.

G. Mitani, a boy, age nine years, who attended the second grade of the Clement Grammar school, hereinbefore described.

K. Furukawa, a boy, age seventeen years, who attended the eighth grade of the Clement Grammar school, hereinbefore described.

C. Yamakama, a boy, age 17 years, who attended the eighth grade of the Clement Grammar school, hereinbefore described.

Y. Niita, a boy, age 20 years, who attended the sixth grade of the Crocker Grammar school, hereinbefore described.

B. Takenaka, a boy, age 15 years, who attended the sixth grade of the Crocker Grammar school, hereinbefore described.

H. Segawa, a girl, age 15 years, who attended the eighth grade of the Denman Grammar school, hereinbefore described.

T. Takahashi, a girl, age 11 years, who attended the fifth grade of the Denman Grammar school, hereinbefore described.

U. Takashi, a girl, age 13 years, who attended the fifth grade of the Denman Grammar school, hereinbefore described.

F. Fusaye, a girl, age 16 years, who attended the sixth grade of the Denman Grammar school, hereinbefore described.

H. Ameniya, a boy, age 16 years, who attended the third grade of the Dudley Stone Primary school, hereinbefore described.

T. Ishimaga, a boy, age 19 years, who attended the fourth grade of the Dudley Stone Primary school, hereinbefore described.

I. Matsuda, a boy, age 18 years, who attended the fourth grade of the Dudley Stone Primary school, hereinbefore described.

J. Kimishima, a boy, age fifteen years, who attended the fourth grade of the Dudley Stone Primary school, hereinbefore described.

K. Izaki, a boy, age sixteen years, who attended the eighth grade of the Fremont Grammar school, hereinbefore described.

K. Izeri, a boy, age 16 years, who attended the seventh grade of the Fremont Grammar school, hereinbefore described.

F. Sadakuru, a boy, age 17 years, who attended the seventh grade of the Fremont Grammar school, hereinbefore described.

H. Ota, a girl, age 16 years, who attended the seventh grade of the Grant Primary school, hereinbefore described.

C. Ogawa, a boy, age 15 years, who attended the eighth grade of the Hamilton Grammar school, hereinbefore described.

J. Nakagaki, a boy, age 17 years, who attended the fifth grade of the Hamilton Grammar school, hereinbefore described.

M. Makai, a boy, age 17 years, who attended the sixth grade of the Hamilton Grammar school, hereinbefore described.

F. Kawamura, a boy, age 16 years, who attended the seventh grade of the Hamilton Grammar school, hereinbefore described.

N. Togasaki, a boy, age 17 years, who attended the seventh grade of the Hearst Grammar school, hereinbefore described.

H. Shimozumi, a girl, age 14 years, who attended the sixth grade of the Hearst Grammar school, hereinbefore described.

K. Fujii, a boy, age 17 years, who attended the eighth grade of the Hearst Grammar school, hereinbefore described.

G. Fugimeaga, a boy, age 17 years, who attended the sixth grade of the Henry Durant Primary school, hereinbefore described.

W. Washizu, a boy, age 15 years, who attended the third grade of the James Lick Grammar school, hereinbefore described.

U. Yoshioka, a boy, age 15 years, who attended the sixth grade of the John Swett Grammar school, hereinbefore described.

T. Tamaka, a boy, age 14 years, who attended the fifth grade of the John Swett Grammar school, hereinbefore described.

K. Orisaka, a boy, age 12 years, who attended the fourth grade of the Laguna Honda Primary school, hereinbefore described.

Y. Managa, a boy, age 19 years, who attended the fourth grade of the Laguna Honda Primary school, hereinbefore described.

I. Arimura, a girl, age 15 years, who attended the seventh grade of the Pacific Heights Grammar school, hereinbefore described.

H. Sato, a boy, age 18 years, who attended the fifth grade of the Pacific Heights Grammar school, hereinbefore described.

I. Enomoto, a boy, age 17 years, who attended the fourth grade of the Pacific Heights Grammar school, hereinbefore described.

S. Inoe, a boy, age 16 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

S. Shigeuchi, a boy, age 16 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

H. Tayama, a boy, age 15 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

I. Yasuhara, a boy, aged 18 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

H. Kitahara, a girl, age 12 years, who attended the third grade of the Pacific Heights Grammar school, hereinbefore described.

M. Arimura, a girl, age 12 years, who attended the third grade of the Pacific Heights Grammar school, hereinbefore described.

N. Gozawa, a boy, age 17 years, who attended the sixth grade of the Pacific Heights Grammar school, hereinbefore described.

C. Tonai, a boy, age 17 years, who attended the sixth grade of the Pacific Heights Grammar school, hereinbefore described.

T. Itow, a boy, age 16 years, who attended the sixth grade of the Pacific Heights Grammar school, hereinbefore described.

Y. Ochi, a boy, age 18 years, who attended the sixth grade of the Pacific Heights Grammar school, hereinbefore described.

T. Kimura, a boy, age 18 years, who attended the fifth grade of the Pacific Heights Grammar school, hereinbefore described.

S. Ono, a boy, age 18 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

K. Kojimoto, a boy, age 20 years, who attended the eighth grade of the Pacific Heights grammar school, hereinbefore described.

W. Watanabe, a boy, age 19 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

H. Tanaka, a boy, age 17 years, who attended the eighth grade of the Pacific Heights Grammar school, hereinbefore described.

R. Homma, a boy, age 15 years, who attended the seventh grade of the Pacific Heights Grammar school, hereinbefore described.

T. Tanaka, a girl, age 12 years, who attended the fifth grade of the Redding Primary school, hereinbefore described.

T. Takada, a boy, age 13 years, who attended the fifth grade of the Redding Primary school, hereinbefore described.

M. Takagi, a girl, age 7 years, who attended the third grade of the Redding Primary school, hereinbefore described.

F. China, a girl, age 8 years, who attended the third grade of the Redding Primary school, hereinbefore described.

K. Muneno, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

T. Yamabata, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

H. Nakana, a girl, age 10 years, who attended the second grade of the Redding Primary school, hereinbefore described.

K. Takada, a boy, age 12 years, who attended the fifth grade of the Redding Primary school, hereinbefore described.

I. Nikuni, a girl, age 8 years, who attended the first grade of the Redding Primary school hereinbefore described.

W. Suzuki, a girl, age 11 years, who attended the first grade of the Redding primary school, hereinbefore described.

N. Aoki, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

K. Aoki, a girl, age 10 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

T. Takada, a boy, age 10 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

T. Yababe, a boy, age 11 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

J. Yano, a boy, age 19 years, who attended the sixth grade of the Spring Valley Grammar school, hereinbefore described.

F. Ogawa, a boy, age 14 years, who attended the eighth grade of the Spring Valley Grammar school, hereinbefore described.

I. Agi, a boy, age 17 years, who attended the eighth grade of the Sutro Grammar school, hereinbefore described.

That all of said pupils are required, should they attend the said Oriental School, to go a much further distance than they did go while attending the schools aforesaid, and in some instances the increased distance they are, or would be forced to go to said school, and in all

April, 1906, and for several
conflagration prevailed in
the city and a large portion of
the city was destroyed. On the said
date of schools were 76, of
which 70 were primary schools and two high
schools. Also one high school was
destroyed. Since that time
only 45 schools. Since
primary structures have been
destroyed at the present
time referred to in the resolution
of the Board of Education. At the present
time ending this school. That
the Board of Education and the other
are no Japanese children
of the City and County of
San Francisco are clearly of showing the
the burnt district of San

Francisco in which said Oriental School is situated, and also
the location of the schools that the children of Japanese descent
attended prior to the passage of said resolution of October 11,

F. China, a girl, age 8 years, who attended the third grade of the Redding Primary school, hereinbefore described.

K. Muneno, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

T. Yamabata, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

H. Nakana, a girl, age 10 years, who attended the second grade of the Redding Primary school, hereinbefore described.

K. Takada, a boy, age 12 years, who attended the fifth grade of the Redding Primary school, hereinbefore described.

I. Nikuni, a girl, age 8 years, who attended the first grade of the Redding Primary school hereinbefore described.

W. Suzuki, a girl, age 11 years, who attended the first grade of the Redding primary school, hereinbefore described.

N. Aoki, a boy, age 13 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

K. Aoki, a girl, age 10 years, who attended the fourth grade of the Redding Primary school, hereinbefore described.

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J. Yano, a boy, age 19 years, who attended the sixth grade of the Spring Valley Grammar school, hereinbefore described.

F. Ogawa, a boy, age 14 years, who attended the eighth grade of the Spring Valley Grammar school, hereinbefore described.

I. Agi, a boy, age 17 years, who attended the eighth grade of the Suto Grammar school, hereinbefore described.

That all of said pupils are required, should they attend the said Oriental School, to go a much further distance than they did go while attending the schools aforesaid, and in some instances the increased distance they are, or would be forced to go, prohibits them from attending said school, and in all cases is a great hardship.

10. That on the 18th day of April, 1906, and for several days following said day a general conflagration prevailed in the City and County of San Francisco and a large portion of said city was burned and dwellings destroyed. On the said 18th day of April, 1906, the number of schools were 76, of which number 28 primary grammar schools and two high schools were destroyed by fire and also one high school was destroyed by the earthquake, leaving intact 45 schools. Since the 18th day of April, 1906, 27 temporary structures have been erected and the total number of school buildings at the present time is 72. The Oriental School, referred to in the resolution hereinbefore set out, is in the burnt section. At the present time there is only one Japanese attending this school. That owing to the action of the Board of Education and the other defendants acting thereunder there are no Japanese children attending any other public schools of the City and County of San Francisco. For the purpose more clearly of showing the location of said Oriental School and the burnt district of San Francisco in which said Oriental School is situated, and also the location of the schools that the children of Japanese descent attended prior to the passage of said resolution of October 11,

1906, and also the residences of said pupils a map is hereto attached, which is a true and correct map of the City and County of San Francisco, which is marked Exhibit A, hereby referred to, and by said reference made a part of this bill. That the figures and circles upon said map represent the number of pupils attending the schools prior to the passage of said resolution of October 11, 1906. That, as will be seen by an inspection of said map, said Oriental School is situated in one corner of the city, and that it will be extremely difficult, if not impossible, for the Japanese children living in various parts of San Francisco and attending schools near their residence to attend the said Oriental School. That by segregating the Japanese children as aforesaid and compelling them to attend the said Oriental School, and no other, the Board of Education of the City and County of San Francisco and the defendants hereinabove named do practically deprive the Japanese children living in the said City and County of San Francisco of the means of education. Owing to the conflagration of San Francisco as hereinbefore described, the conditions of transportation of San Francisco are much impaired, and it would be and is more difficult now for children of Japanese descent living at remote distances to attend said Oriental School than it was or would have been prior to said conflagration. That now and for more than six months last past, and during all the times in this bill mentioned, children of German, French, Italian and other European parentage, citizens of the above named respective foreign countries and residents of the City and County of San

Francisco were and are not denied access to and did and do attend the public schools of the City and County of San Francisco without discrimination, and are not compelled to attend separate schools for children of foreign parentage. That no separate public school has been established by the said Board of Education of the City and County of San Francisco for the children of any foreign parentage other than the said Oriental School. That thereby the action of said Board of Education in compelling the Japanese children to attend said Oriental School, but in allowing children of English, French, German, Italian and other European parentage to attend the public schools of the City and County of San Francisco, is a discrimination against the said Japanese children based upon race and made arbitrarily and without any adequate reason therefor, and is in itself a declaration that Japanese children are racially inferior to children of other parentage, and are not fit to associate with the same, and is in flagrant violation of the treaty hereinbefore set out, entered into and now existing between the United States of America and the Empire of Japan, made by authority of the United States and constituting the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

11. Your orator further shows that not only is said section 1662 of the political code of the State of California, if it has the meaning and effect of applying to Japanese children, a violation of the provisions of the treaty hereinbefore referred to, but that the same is also void under the state constitution of the State of California because it attempts to

1906, and also the residences of said pupils a map is hereto attached, which is a true and correct map of the City and County of San Francisco, which is marked Exhibit A, hereby referred to, and by said reference made a part of this bill. That the figures and circles upon said map represent the number of pupils attending the schools prior to the passage of said resolution of October 11, 1906. That, as will be seen by an inspection of said map, said Oriental School is situated in one corner of the city, and that it will be extremely difficult, if not impossible, for the Japanese children living in various parts of San Francisco and attending schools near their residence to attend the said Oriental School. That by segregating the Japanese children as aforesaid and compelling them to attend the said Oriental School, and no other, the Board of Education of the City and County of San Francisco and the defendants hereinabove named do practically deprive the Japanese children living in the said City and County of San Francisco of the means of education. Owing to the conflagration of San Francisco as hereinbefore described, the conditions of transportation of San Francisco are much impaired, and it would be and is more difficult now for children of Japanese descent living at remote distances to attend said Oriental School than it was or would have been prior to said conflagration. That now and for more than six months last past, and during all the times in this bill mentioned, children of German, French, Italian and other European parentage, citizens of the above named respective foreign countries and residents of the City and County of San

Francisco were and are not denied access to and did and do attend the public schools of the City and County of San Francisco without discrimination, and are not compelled to attend separate schools for children of foreign parentage. That no separate public school has been established by the said Board of Education of the City and County of San Francisco for the children of any foreign parentage other than the said Oriental School. That thereby the action of said Board of Education in compelling the Japanese children to attend said Oriental School, but in allowing children of English, French, German, Italian and other European parentage to attend the public schools of the City and County of San Francisco, is a discrimination against the said Japanese children based upon race and made arbitrarily and without any adequate reason therefor, and is in itself a declaration that Japanese children are racially inferior to children of other parentage, and are not fit to associate with the same, and is in flagrant violation of the treaty hereinbefore set out, entered into and now existing between the United States of America and the Empire of Japan, made by authority of the United States and constituting the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

11. Your orator further shows that not only is said section 1662 of the political code of the State of California, if it has the meaning and effect of applying to Japanese children, a violation of the provisions of the treaty hereinbefore referred to, but that the same is also void under the state constitution of the State of California because it attempts to

delegate to the various boards of education throughout the State of California the power to determine whether Japanese children shall or shall not attend separate schools or the public schools generally. That it is not in itself a declaration of the legislative will or policy, but leaves it to the arbitrary whim or caprice of each board of education in the State of California to determine for itself whether or not in its particular school district there shall be established a separate school for Japanese children, without prescribing the number of children or the conditions upon which said power shall be exercised, and that therefore it is a delegation of legislative power to a subordinate tribunal in violation of the provisions of the State constitution.

12. That in conformity with the above quoted resolution of the Board of Education of the City and County of San Francisco, Japanese children, subjects of the Empire of Japan and residents of the City and County of San Francisco, between 6 and 21 years of age, have been and now are refused admission to any of the public schools of the primary and grammar grades of the City and County of San Francisco, except the said Oriental School. The Japanese subjects and children of Japanese descent are permitted to attend any and all public schools of the City and County of San Francisco of all the other grades than those of the primary and grammar grades.

13. That your orator makes no charge that the said Oriental School is inferior in its provisions of teachers or their competency, or its accommodations, paraphernalia and equipment, or the character of instruction therein given to the

schools of the same grade attended by pupils of other parentage throughout the City and County of San Francisco, but it claims and charges that to compel all of the children of Japanese descent to thus attend a single school without regard to place of their residence or convenience, solely by reason of the fact of race or descent, is a hardship and discrimination against all of them and violates evidently their legal rights.

14. That the acts aforesaid constitute a violation of the treaty between the United States and Japan and hinder and prevent the United States from carrying out its treaty obligations to the Empire of Japan, and to its citizens and subjects, as is the right and duty of the United States and imperatively demanded by the National interests, and that the only proper and appropriate relief for the complainant is to apply to a court of equity in which such matters are cognizable for an injunction against the persons so preventing the complainant from carrying out its treaty obligations with the said Empire of Japan; that the said defendants intend and threaten to continue said acts and declare that they intend to carry out and observe the resolution of the Board of Education hereinbefore referred to, and do intend in the future and for all time to prevent the children in this bill of complaint described and such other children as are of Japanese descent from becoming pupils in public schools of the primary and grammar grades of the City and County of San Francisco, except the said Oriental School, and intend to continue the discrimination so practiced against children of Japanese descent, all of which is in violation of the

provisions of the treaty entered into as aforesaid between the United States and the Empire of Japan.

15. Wherefore, and forasmuch as your orator is remediless in the promises under and by the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and reviewable, it files this bill of complaint and prays:

1. That said Section 1662 of the Political Code of the State of California may be construed by this Honorable Court and so much thereof as refers to separate schools for children of foreign parentage may be determined and decreed to have no application to children of Japanese descent, and therefore that the resolution of the Board of Education of October 11, 1906, may be decreed to be void and of no legal effect.

2. That it be determined and decreed that the State of California has received the grants of land and appropriations of money in this bill hereinbefore specified upon trust and condition that the same should be used for the public schools of said State in conformity with the Constitution of the United States and with all treaties made by authority of the United States, and that no unjust discrimination should be made therein against the subjects of any nation with which the United States has entered into treaty stipulations providing for the same rights and privileges to be enjoyed by the subjects of said nation as are enjoyed by the subjects of the most favored nation with respect to the said schools, and that the legislation of the State of California hereinbefore referred to

is a denial of said equality of rights and privileges, provided the same be held to apply to children of Japanese descent.

3. That the said defendants and each and all of them and each and all their agents, servants and employees be restrained and enjoined from excluding the Japanese pupils hereinabove named and described from attending those public schools of the City and County of San Francisco that they attended before the passage of the resolution of the Board of Education as hereinbefore described, and that they each and all be enjoined and restrained from carrying into effect said resolution of the Board of Education in this bill described or any similar resolution or in discriminating in the manner stated in this bill or in any manner whatsoever against said Japanese children or other like children of school age residing in San Francisco on the ground or because they are of Japanese descent, and that also during the pendency of this action and until the final entry of a decree in this case that the said defendants and each of them be so enjoined and restrained.

4. MAY IT PLEASE YOUR HONORS to grant to your orator a WRIT OF SUBPOENA directed to the said defendants, Lawrence F. Walsh, Aaron Altman, Thomas F. Boyle, David Oliver, Junior, Alfred Roncovieri, Thomas L. Heaton, W. B. Howard, Arthur A. Macurda, Reginald H. Webster, Adolph Herbst, S. J. Jones, A. Gavigan, A. G. Regan, A. Catlin, Philip Prior, E. E. Kelly, W. W. Stone, L. K. Burke, A. E. Tiernan, C. W. Mark, A. L. Mann, W. L. Tarpy, S. H. Earle, J. Saunders, T. Spencer, F. Banning, C. M. Johnston, N. A. Wood, Rose Goldsmith, N. A. Scherer,

Pauline Hart, I. E. Shaw, M. A. Haswell, A. E. Kellogg, R. Faulkner, L. McElroy, S. J. Mann, N. F. Sullivan, G. Washburn, James H. Simmons, A. J. Itsell, C. B. Barlow, James T. Hamilton, E. Butler, A. Lyser, A. T. Campbell, F. Quinlan, W. H. Edwards, M. J. Parolini, K. F. Casey, M. L. O'Neal, William A. Leggett, E. Bartlett, M. H. Walker, K. H. Crowley, A. M. Haggarty, K. E. Brogan, E. H. Lyon, D. J. Delay, V. D. Heath, A. M. Stincen, S. B. Jenkins, A. Dwyer, M. A. Deane, M. E. Keating, C. F. Riordan, J. M. A. Hurley, I. E. Mills, W. H. DeBell, K. McGrath, E. S. Code, C. R. Pechin, M. Magner, T. H. McCarthy, E. L. McCarthy, E. E. Stincen and M. E. Thomas, commanding them and each of them under a certain penalty therein to be stated to personally appear before this court, then and there to answer this bill of complaint, but not under oath, an answer under oath being hereby expressly waived, and to perform and abide by such order and decree as to your honors may seem meet in the premises.

5. Your orator prays for such further relief in the premises as the nature and circumstances of this case may require and to this honorable court may seem meet and proper.

(Sgd.) CHARLES J. BONAPARTE,

Attorney General of the United States.

ROBT. T. DEVLIN,

United States Attorney for the Northern District of California.

Attorneys and Solicitors for Complainant.