EDITORIAL COMMENT

THE DECISION IN CALIFORNIA RELATING TO THE HOLDING OF LAND BY JAPANESE

In 1920 the State of California passed the so-called Alien Land Law, of which the first and second sections follow:

> Section 1. All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, in this state, in the same manner and to the same extent as citizens of the United States except as otherwise provided by the laws of this state.
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> Section 2. All aliens other than those mentioned in section one of this act may acquire, possess, enjoy and transfer real property, or any interest therein, in this state, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.[1]

Although this law has been on the statute book but a short time, it has been the source of much litigation. It is maintained by aliens residing in California, and indeed on the Pacific Coast, that the provisions of the law discriminate unjustly between alien residents, and that they are in conflict with the Treaty of 1911 between the United States and Japan. Suits have been brought against the Attorney General of California, and the District Attorneys of San Francisco and of Los Angeles, to enjoin those officials from enforcing the provisions of the Alien Land Law. One of the most recent is that of Frick and Satow vs. U. S. Webb, Attorney General of California and Matthew Brady, District Attorney of San Francisco, in which the plaintiffs filed their complaint in the District Court of the United States, Northern District of California, Southern Division, in order to secure a temporary injunction against the defendants. As the District Court was of the opinion that it required for its decision the presence of three judges, one of whom should be a Circuit Judge of the United States, it was heard before two District Judges and the Hon. William W. Morrow, Circuit Judge.

The case arose under the second section of the act, and the material questions are thus stated by Judge Morrow:

> It is alleged in the complaint that Satow is a subject of the Emperor of Japan, born in the Empire of Japan, of Japanese parents, and is also a resident of California. Satow is an alien, and he is ineligible to citizenship under the laws of the United States. He is therefore one of the

[1] Statutes of California, 1921, p. lxxxiii.

> aliens who may not acquire, possess, enjoy, and transfer real property or any interest therein, in this state, unless it is so provided in the treaty between this country and Japan. Our attention has not been called to any provision in the treaty between this country and Japan providing that such an alien may acquire, possess, enjoy, and transfer real property or any interest therein in this state, other than to lease land for residential or commercial purposes.

The rights which the Japanese have under the treaty to which Judge Morrow refers are contained in Article 1 thereof:

> The citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.[2]

The question before the court then was, as stated by Judge Morrow:

> Is the ownership of 28 shares of the capital stock of the Merced Farm Company, a corporation organized under the laws of the State of California for agricultural purposes, such an interest in real property as to bring him within the prohibitory provisions of this act?

It is alleged that the Merced Farm Company is a California corporation authorized to acquire, possess, enjoy and convey agricultural land; that the Company is, in fact, the owner of approximately 2200 acres of agricultural land situated in Merced County, and that the land "thus owned is not for leasing, for residential, or for commercial purposes". On this state of the law and of the facts Judge Morrow said:

> We think the ownership of stock in such a corporation would be an interest in real property which would bring the alien owner of such stock (who is ineligible to citizenship) within the prohibitory provisions of the act, and that under section 2 of the act the Attorney General is authorized by sections 7 and 8 of the act to institute proceedings to have the escheat of such interest in real property in the manner provided by section 474 of the Code of Civil Procedure of this state, and that such proceedings would not be in violation of the treaty between the United States and Japan or the Fourteenth Amendment of the Constitution of the United States.

This was the unanimous opinion of the court. Sawtelle, District Judge, delivered an opinion in which Judge Morrow, Circuit Judge, and District Judge Dooling concurred. It is very short and to the point, and has the advantage of citing the authorities upon which the court reached its conclusions. Its material portion follows:

[2] Charles, Treaties, Conventions, International Acts, Protocols and Agreements between the United States and other Powers, 1910–1913, Vol. 3, p. 77.

> It is the unanimous opinion of this court that the plaintiffs herein are not entitled to injunctive relief and that their application for a temporary injunction should be denied; that the California Statute here involved violates no provision of the Constitution of the United States, nor does it conflict with any provision or stipulation of the Treaty between Japan and the United States.
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> We are entirely satisfied with the decision of the court in the recent cases of Terrance vs. Thompson, 274 Fed. 841; Porterfield and Mizuno vs. Webb, Attorney General, et al., 279 Fed. 114, and O'Brien and Moye vs. Webb, Attorney General, et al., 279 Fed. 117, and believe the opinion in each of those cases is sound law and correctly interprets those provisions of the constitution and treaty here involved.

In Terrance vs. Thompson, 274 Fed. 841 (1921), the nature of the treaty between the United States and Japan, and the extent to which it conferred rights upon Japanese subjects residing within the United States, are considered in detail. In this case the plaintiffs, Terrance, *et ab.*, were the owners of certain land in the State of Washington, who wished to lease their lands to Nakatsuka, a subject of Japan, who desired a lease of the lands. It is stated that the Japanese in question was engaged in farming, wholesale and retail trading in foreign products, and that the leasing of the land in question would be prevented by the enforcement by Thompson, the Attorney General of the State of Washington, of Chapter 50, Laws of Washington, 1921, commonly known as the Alien Land Bill. The United States District Court of the State of Washington held that the treaty with Japan did not grant the right to lease property for agricultural purposes; that the law of the State did not conflict with the provisions of the treaty, and that, therefore, the Attorney General of the State should not be enjoined from enforcing the provisions of the state law.

The act in question prohibited the purchase or lease of lands by an alien who had not declared his intention to become a citizen. Inasmuch as it is held that a Japanese may not become a citizen of the United States, it necessarily follows that he could not legally declare his intention to assume a status which he could not acquire.

In Porterfield and Mizuno vs. Webb, Attorney General, et al., 279 Fed. 114 (1921), it appeared that Porterfield owned 80 acres of land peculiarly adapted to raising vegetables; that he desired to lease the land in question to Mizuno, a subject of the Emperor of Japan, but that he was prevented from so doing because of the California Alien Land Law. For the reason stated in the Terrance case, which was cited with approval, Dooling, District Judge, denied the motion for preliminary injunction against the Attorney General.

In O'Brien and Moye vs. Webb, Attorney General, et al., 279 Fed. 117 (1921), it appeared that one O'Brien wished to employ one Inouye, a Japanese subject, lawfully residing in the State of California, to take possession of the land in question for a period of four years "for the purpose of planting, cultivating, and harvesting crops to be grown on owner's land." The owner

was to provide and maintain housing accommodations, to furnish necessary implements, etc., for the proper farming of the land, but it was specifically stated that the employe, technically called a cropper, should have "no interest or estate whatsoever in the land described herein." Dooling, District Judge, before whom the petition for injunction was heard, held that the contract was not one of lease, as it passed no interest in land. Numerous cases to this effect were cited, notably the case of Caswell vs. Districh, 15 Wend. (N. Y.) 379, which "seems to run through the books as a leading one", in which it was stated that:

> Where a farm is let for a year upon shares, the landlord looks to his interest in the crops as his security, and thereby is enabled to accommodate tenants who otherwise would not be trusted for the rent.

The learned Judge quoted the opinions of text-books to the same effect. The motion for the injunction was, therefore, granted.

These cases seem to express the views held by federal courts on the Pacific Coast as to the rights acquired under the Treaty with Japan, and as to the rights which the States can exercise without violating the provisions of that treaty. Inasmuch as the questions involved in these cases may ultimately be passed upon by the Supreme Court, it seems at present advisable only to call attention to the question without indulging in further comment or criticism.

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PRACTICAL CODIFICATION OF INTERNATIONAL LAW

"The lack of precision," says Oppenheim, "which is natural to the majority of the rules of the Law of Nations on account of its slow and gradual growth has created a movement for its codification."

But what is meant by the term codification! Its Dictionary definition as applied to the laws of an individual country is "the reducing of its unwritten or case law to statutory form." This in the matter of international law is impossible, because no authority is empowered to enact statutes to cover it. What then in international law is the equivalent of statutory enactment? Clearly it is the general acceptance by States under treaty. Such a process consists of two parts; the scientific determination of the law as it is and should be, and the public universal acceptance of that law as it shall be, as something by which each State consents to be bound. The first process is academic, scholarly; the second process is political.

Take, as an illustration, the processes by which the Geneva Convention came into existence. First appeared the impassioned propaganda of M. Dunant describing the unnecessary suffering of the battlefield in *Un Souvenir de Solferino*, and pleading for extra-military aid to the wounded. Then came a private conference at Geneva, called by a local society, which studied the whole subject and argued for the neutralization of extra-military agencies