Le Gouvernement Impérial du Japon ayant pour but d'écarter des doutes qui pourraient exister concernant la nature de ses relations avec la Corée, a autorisé le soussigné Chargé d'Affaires de Japon à Berne à déclarer ainsi qu'il suit:

Les parties de l'énumération dans le préambule de la dite convention du 6 juillet, 1906, et la signature dans la même convention qui font figurer Sa Majesté l'Empereur de Corée comme une Partie contractante de la dite convention, étant dans l'erreur et incompatible avec l'état réel des affairs, sont sans valeur ni effet et sont considérées par le Gouvernement Impérial du Jauon comme nulles et non avenues.

Fait à Berne, le 15 octobre, 1906.

(sig.) GENSHIRO NISHI,
Chargé d'Affaires du Japon.

Pour copie, certifiée conforme,
Le secrétaire du département politique
de la Confédération suisse:
GRAFFINA.

Berne, le 23 octobre, 1906.

JAPANESE SITUATION

The editorial comment in a previous number of the JOURNAL (Editorial Comment, January number of the JOURNAL, pp. 150-153) discussed the principles involved in the exclusion of Japanese children from the public schools of San Francisco in general but it is hoped in sufficient detail. The good understanding between the United States and Japan has not been broken although perhaps for a period it was strained; and both nations preserved the attitude expected of those who deal with large questions and whose decisions are of moment to the rest of the world. The "hot-heads" of our country, those who, in the language of the distinguished southerner, are "invisible in war, but invincible in peace," rushed into print and the press teemed with the rights and duties of the citizens of the United States. It is to be presumed that the "invisible and invincible" class in Japan did the same. Thoughtful people, however, recognized the fact that a principle was involved and that this principle should be considered in its various aspects in the hope of reaching a solution satisfactory to both countries.

It would seem that the competition of the Japanese in the labor market is more to be feared than association with him in the class-room, and an exclusion of the Japanese laborers from the country was more desirable than their exclusion from the public schools. The representatives from the Pacific coast were willing to waive the question of the admission or exclusion of the Japanese to or from the public schools provided Japanese laborers should be excluded. This solution of the difficulty was seemingly acceptable to Japan for there seems to be no reason why Japanese laborers should at the present time seek employment so far

away from home. A clause therefore was added to the first section of the act to regulate the immigration of aliens into the United States, which reads as follows:

> Provided further, That whenever the president shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the canal zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the president may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the canal zone.

The meaning of this clause is evident, namely, that when the president, by such investigation as he cares to make, finds that the presence of certain laborers, skilled or unskilled, is detrimental to labor conditions he shall then forbid their entrance. In accordance with the act, the president issued an executive order dated March 14, 1907, which is set forth at length:

> WHEREAS, by the act entitled "An Act to regulate the immigration of aliens into the United States," approved February 20, 1907, whenever the president is satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the canal zone, are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, it is made the duty of the president to refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such country or from such insular possession or from the canal zone;
>
> And Whereas, upon sufficient evidence produced before me by the department of commerce and labor, I am satisfied that passports issued by the government of Japan to citizens of that country or Korea and who are laborers, skilled or unskilled, to go to Mexico, to Canda and to Hawaii, are being used for the purpose of enabling the holders thereof to come to the continental territory of the United States to the detriment of labor conditions therein;
>
> I hereby order that such citizens of Japan or Korea, to wit: Japanese or Korean laborers, skilled and unskilled, who have received passports to go to Mexico, Canada or Hawaii, and come therefrom, be refused permission to enter the continental territory of the United States.
>
> It is further ordered that the secretary of commerce and labor be, and he hereby is, directed to take, through the bureau of immigration and naturalization, such measures and to make and enforce such rules and regulations as may be necessary to carry this order into effect.
>
> THEODORE ROOSEVELT.

The federal suit against the school board to uphold the admission of the Japanese has been dismissed as it was unnecessary; the San Francisco authorities pursuant to an agreement with the federal authorities rescind-

ed the obnoxious order excluding the Japanese, and the cause of friction between two great and representative nations seems to be removed. That no cloud may darken the horizon is undoubtedly the hope of the enlightened in both countries.

The school question has given rise to several interesting articles upon the treaty-making power of the United States.[1] In the Green Bag for January ,1907, Prof. Charles C. Hyde discusses the legal questions involved in the segregation of Japanese students; he intimates a belief that the treaty-making power of the federal government is unlimited. Prof. William Draper Lewis, writing in the American Law Register for February, 1907, agrees with the generally accepted principle that the treaty-making power is not limited to matters over which congress may exercise legislative power, and concludes that it is limited only by the express restrictions of the constitution, and by the implied reserved rights of the citizens of the United States; he thinks that the treaty-making power is not restricted, through implication, by the federal character of our government; the federal government

> has power under the constitution to make a treaty with Japan or any other foreign nation, giving to the subjects or citizens of the foreign nation residing in one of the states the right to attend the public schools of the state on the same terms as native or naturalized citizens.

Prof. Simeon E. Baldwin, in the Columbia Law Review for February, 1907, expresses views similar to those of Professor Lewis. In the Columbia Law Review for March, 1907, Mr. Arthur K. Kuhn concludes that there are no restrictions upon the federal treaty-making power and that

> the unrestricted exercise of the treaty power is essential to the central government as representing the nation and its sovereignty over and against foreign nations.

All of these writers agree that the United States has the power to confer schooling privileges in the state schools upon Japanese students, but none of them expresses an opinion as to whether the treaty actually confers such privileges. In a very careful and sane article by Theodore P. Ion, in the Michigan Law Review for March, 1907, it is contended on authority and reason that the treaty does not confer the right of education in the public schools; that the state of California performs its international duty, supposing the Japanese have the right claimed, by furnishing equal, not identical, facilities; that foreigners cannot well claim to enjoy in this country greater rights and privileges than native

[1] See list of articles in "Periodical Literature."

born citizens of the United States enjoy, referring especially to the situation of the negro.

Mr. T. Baty, in the Law Magazine and Review (of London) for February, 1907, examines the text of the treaty, and expresses the positive opinion that no infringement of Japanese rights, contractual or real, can be said to have been committed.

THE NEW IMMIGRATION LAW

The bill "to regulate the immigration of aliens into the United States" which was introduced during the first session of the fifty-ninth congress, finally became law on the twentieth of February, 1907, after extended debates in both houses. The measure was considered with minute care and was subjected to thorough scrutiny by senators and representatives alike. Certain differences of opinion were early manifested relative to important sections of the proposed enactment which resulted in mutual concessions before the bill became law, but as finally enacted it is a distinct advance upon the existing legislation.

The act of March 3, 1903, which was the existing law on the subject of immigration prior to the recent enactment, was a revision of former laws on the same subject theretofore in force. The act of February 20, 1907, is an amendment and extension of the act of 1903. Many of its provisions have been incorporated into the new law without change. In many places insertions have been made in accordance with the principle of selection upon which our immigration system is founded, while other additions may be explained upon general reasons of policy. The more important changes include an increase in the "head tax" so-called; certain additions to the excluded classes; a provision defining contract laborers; a check upon the padrone system; an increase in the amount of air space allowed to steerage passengers in steamships; the correction of an apparent variance between certain sections of the law heretofore in force relating to the time within which deportation can take place so as uniformly to extend the period to three years in all cases; the creation of a bureau of information to facilitate the distribution of immigrants throughout the United States; the formation of a commission to examine and report to congress upon the subject of immigration, and the project of an international immigration conference, or in lieu thereof, the appointment of special commissioners to visit foreign countries and enter into agreements with them for the purpose of obtaining their coöperation in carrying out our immigration laws. Many other changes were made, perhaps of minor importance, but nevertheless useful, which show the