

## REAL QUESTIONS ABOUT JAPANESE

### Root Says Treaty Power Is Supreme.

### STATE RIGHTS NOT INVOLVED

### Secretary Explains Issue at San Francisco.

### NEVER ANY DANGER OF WAR

### International Law Association Hears Learned Discourse on Power of Nation to Grant Equal Rights to All Aliens.

WASHINGTON, April 19.—That there was never at any time any danger of war between the United States and Japan, growing out of the recent controversy regarding the segregation of the Japanese school children in the public schools in San Francisco, was made clear by Secretary Root in an address on the "Real Question" under the Japanese Treaty and the San Francisco School Board Resolutions" at the first annual meeting of the American Society of International Law here today. The question of state rights, Mr. Root declared, was not involved. Much of the afternoon session was devoted to a discussion of the Drago doctrine.

The delegates were entertained at dinner last night by Charles Henry Butler. One hundred guests, prominent in Washington official, diplomatic and social life, were present to meet the visiting lawyers. The opening session today was well attended. Secretary Root, who was the first speaker, began with a review of the constitutional, legal and treaty provisions involved. He then quoted the resolution of the San Francisco Board of Education requiring all Chinese, Japanese and Korean children to attend the Oriental school and then said:

### Discrimination Among Aliens.

The school system thus provided school privileges for all resident children, whether citizen or alien; all resident children were included in the basis for estimating the amount to be raised by taxation for school purposes, the fund for the support of the school was raised by a levy upon all property of resident aliens as well as of citizens; and all resident children, whether of aliens or of citizens, were liable to be compelled to attend the school, that, under the resolution of the Board of Education the children of resident aliens of all other nationalities were freely admitted to the schools, the citizens of Japan residing in the United States were, by that exclusion, denied the same privileges, liberties and rights relating to the right of residence which were accorded to the citizens or subjects of the most-favored nation.

### Do Treaties Control States?

After referring to the settlement of the questions, Mr. Root said in making and it is obvious that three distinct questions were raised by the claim originating with Japan and presented by our National Government to the courts in San Francisco. The first and second were merely questions of construction of the treaty. These questions of construction are by no means free from doubt, but they concern only the meaning of a particular clause in a particular treaty.

The other question was whether, if the treaty had the meaning which the government of Japan ascribed to it, the government of the United States had the constitutional power to make such a treaty agreement with a foreign nation which should be superior to and controlling upon the laws of the State of California. A correct understanding of that question is of the utmost importance not merely as regards the State of California, but as regards all states and all citizens of the Union.

There was a very general misapprehension of what Japan really undertook to do. It was assumed that in making and asserting the validity of the treaty of 1904 the United States was asserting the right to compel the State of California to admit Japanese children to its schools. No such question was involved. That treaty did not, by any possible construction, assert the authority of the United States to compel any state to maintain public schools, or to extend the privileges of its public schools to Japanese children or to the children of any alien residents. The treaty did assert the right of the United States, by treaty, to assure to the citizens of a foreign nation residing in American territory equality of treatment with the citizens of other foreign nations, so that, if any state chooses to extend privileges to alien residents as well as to citizen residents, the state will be forbidden by the obligation of the treaty to discriminate against the resident citizens of the particular country with which the treaty is made, and will be forbidden to deny to them the privileges which it grants to the citizens of other foreign countries. The effect of such a treaty, in respect of education, is not positive and compulsory; it is negative and prohibitory. It is not a requirement that the state shall furnish education; it is a prohibition against discrimination when the state does choose to furnish education. It leaves every state free to have public schools or not, as it chooses, but it bars to every state, if you provide a system of education which includes alien children, you must not exclude these particular alien children.

It has been widely asserted or assumed

that this treaty provision and its enforcement involved some question of state's rights. There was and is no question of state's rights involved, unless it be the question which was settled by the adoption of the Constitution.

### Distribution of Power.

Legislative power is distributed; upon some subjects the National Legislature has authority; upon other subjects the state Legislature has authority. Judicial power is distributed; in some cases the Federal courts have jurisdiction; in other cases the state courts have jurisdiction. Executive power is distributed; in some fields the National executive is to act; in other fields the state executive is to act. The treaty-making power is not distributed; it is all vested in the National Government; no part of it is vested in or reserved to the states. In international affairs there are no states; there but one Nation, acting in direct relation to and representation of every citizen in every state. Every treaty made under the authority of the United States is made by the National Government, as the direct and sole representative of every citizen of the United States residing in California, equally with every citizen of the United States residing elsewhere.

### Power to Make Treaties.

Reciprocal agreements between nations regarding the treatment which the citizens of each nation shall receive in the territory of the other nation are among the most familiar, ordinary and unquestioned exercises

of the treaty-making power. To secure the citizens of one country against discriminatory laws and discriminatory administration in the foreign countries where they may travel, or to secure the same treatment for the citizens of the other nation are among the most familiar, ordinary and unquestioned exercises of the treaty-making power. To secure the citizens of one country against discriminatory laws and discriminatory administration in the foreign countries where they may travel, or to secure the same treatment for the citizens of the other nation are among the most familiar, ordinary and unquestioned exercises of the treaty-making power.

During the entire history of the United States provisions of this description have been included in our treaties of commerce and navigation with practically all the other nations of the world. Such provisions are entirely independent of the subject of treaty agreements among the nations of Europe before American independence; and the power to make such provisions was exercised without question by the Continental Congress in the treaties which it made prior to the adoption of our Constitution.

### Treaties Annul State Laws.

It has been settled for more than a century that the fact that a treaty provision would interfere with or annul the laws of any state, or the contrary notwithstanding, is no impeachment of the treaty's authority.

There can be no limitation on the power of the United States to make treaties, or to make treaties which shall be superior to and controlling upon the laws of the State of California, and to treaties made by their authority. A treaty cannot be the supreme law of the land, and it cannot be superior to any act of a state Legislature can stand in its way.

### Rights of Aliens in Republic.

Since the rights, privileges and immunities, both of person and property, to be accorded to foreigners in our country and to our citizens in foreign countries are a proper subject of treaty provision and within the limits of the treaty-making power, and since such rights, privileges and immunities may be given by treaty in contravention of the laws of any state, it follows of necessity that the treaty-making power alone has authority to determine what those rights, privileges and immunities shall be. No state can set up its laws as against the grant of any particular right, privilege or immunity any more than against the grant of any other right, privilege or immunity. No state can say a treaty may grant to alien residents equality of treatment as to property but not as to education, or as to the exercise of religion and as to burial but not as to education, or as to education but not as to property or religion. That would be substituting the mere will of the state for the judgment of the President and Senate in exercising a power committed to them and prohibited to the states by the Constitution.

### Talk of War Was Foolish.

There was one great and serious question underlying the whole subject which made all questions of construction and of scope and of effect of the treaty itself questions as to whether the claims of Japan were well founded or not; all questions as to whether the resolution of the School Board was valid or not—seem temporary and comparatively unimportant. It was not a question of war with Japan. All the foolish talk about war was purely sensational and

## ARGUMENT BEGUN IN HERMANN CASE

### Adkins Dilates on Great Letter Writer.

### GOVERNMENT PROVIDED BOOKS

### Proof Official Letters Were Copied With Private.

### RAKEOFF FROM ROBERTSON

### Hermann Liable to Imprisonment for Receiving Clerk's Salary. Where He Got Himself—Proof of Agreement With Mays.

OREGONIAN NEWS BUREAU, Washington, April 19.—The argument of the Hermann case will occupy more time than was first supposed and it is now doubtful if the case can go to the jury before next Wednesday. Assistant District Attorney Adkins began the opening argument for the prosecution today, but had not covered more than half the ground when court adjourned this evening. He will resume on Monday.

In opening his argument Mr. Adkins admitted that it had been the custom of other Land Commissioners to keep "private" letter-books, but Hinger Hermann during his regime outstripped all his predecessors as a letter-writer and changed the rule for handling incoming mail in the office so that every letter from Oregon was diverted to the Commissioner's office, answered by him and the answers copied into the books which he is charged with destroying.

### Government Paid for Books.

Hermann's books were not the personal property of the man who happened to occupy the office. He never paid one cent for them, but they came to him from the stationery department and contained not only the letters written by the defendant as a private individual, but also those written as Commissioner of the General Land Office.

"Was he paid \$5000 per annum for conducting his private correspondence and for supervising the store of his son, Schiller?" the Assistant United States Attorney continued. "It is shown that many letters were written by Hermann to members of his family, but three men who acted as his secretary at various times have testified that the outgoing mail reached an average of 20 to 30 letters a day, and can you be expected to believe all of this immense correspondence was purely personal?"

### Letters Produced Are Official.

Mr. Adkins also referred to the liberal use of "franked" envelopes by defendant as indicating the official character of the contents of a great majority of the letters written. A number of letters introduced in the case as Government exhibits were read in the course of the argument. Some constituted separate chains of correspondence, that is the original letter and the answer made by Hermann.

"These originals were considered official," Mr. Adkins said, "because we find them filed in the General Land Office."

Are we to believe, then, that the letters received by Commissioner Hermann were official and the answers he wrote were purely personal?"

### Official Letters in the Books.

Taking up the question of what knowledge Hermann had that the "personal" letter-books were used for reference, Mr. Adkins referred to the testimony of Private Secretary Reger and declared that Mr. Reger said he frequently asked Hermann whether certain clerks might look into the books.

"Again, why did Hermann put upon so many packets of papers which went down into the files of the Land Office with the indorsement, 'answered by B. H. Commissioner'?" queried Mr. Adkins. "Was not that in fact a record



Congressman John Jacob Koch, One of the Leading Candidates for Senator from Wisconsin.

by which it was intended that any letter desired might be traced to the Commissioner's 'personal' book?"

The Assistant United States Attorney referred sarcastically to the system followed by the defendant in having a large number of relatives employed in the land service and said Hermann's brother was made Forest Supervisor on condition that part of the salary of the office was to go to discharge a debt to the defendant.

### Graft on Robertson a Crime.

It was also declared that Hermann's admission that Harry Robertson, the session clerk, paid to him a portion of the monthly salary of that office was an admission of a violation of section 1781 of the revised statutes, and that indictment and conviction on such charge would have meant imprisonment in the penitentiary and perpetual disbarment from holding office under the Government at the very time he was accepting the appointment to the commissionership of General Land Office.

Speaking of the question whether the defendant knew that letters written at his dictation were being copied into the "personal" books, Mr. Adkins quoted from Hermann's testimony where the statement was made that he thought every letter written on the blue letter-heads of his private office, if copied at all, were copied into the "personal" books.

"There alone Hermann forgot himself and told the truth," Mr. Adkins declared, "because there his testimony agrees with other witnesses."

Mr. Adkins was discussing the tip Hermann sent Mays at the time court adjourned. He pointed out parts of the testimony that showed Hermann had previously had understandings with Jones and others in regard to the Blue Mountain reserve and demonstrated that Hermann's telegram to Mays gave the conspirators three days to make things better the withdrawal became effective. He declared that Hermann had utterly failed to explain the reason for sending the telegram to Mays and attributed his confusion to the fact that Hermann believed the telegram itself had been destroyed and was beyond the reach of the prosecuting officers.

Mr. Bryan believes in states' rights and

## BRYAN GIVES UP OWNERSHIP FAD

### Favors State Control of Railroads.

### PLATFORM HE WOULD BUILD

### Campaign Funds and Usurpation Main Planks.

### STRONG ON TARIFF REFORM

### Will Substitute Colonial Reform for Anti-Imperialism and Ignore Free Silver—Will Throw Out No Bait to the Populists.

OMAHA, Neb., April 19.—(Special.)—As at present planned, there will be no advocacy of the Government ownership of railroads in the next National Democratic platform, if William J. Bryan and his followers control the convention. Free silver probably will not be mentioned. The anti-imperialism which has characterized the last two National platforms will give place to a plea for reform in colonial policy.

James C. Dahman, Democratic National committeeman from Nebraska, who has recently been in close consultation with his chief over the plans and policies of the forthcoming campaign, today made public an outline of the Bryan platform as at present drafted. According to Mr. Dahman, the planks on which Mr. Bryan chiefly relies for Democratic victory are one defining the necessity for the proper use of contributions from all sources to be used in the campaign and another denouncing usurpation of power by the President, in both of which respects, it would be asserted, President Roosevelt has overstepped true Democratic principles.

### Tariff Reform Strong Feature.

Tariff reform will also be made a strong feature of the platform. The plank will be so worded as to indicate a reasonable conservatism on tariff reduction. It is believed by the Bryan leaders that many Republican voters can be drawn to the Democratic ticket by a declaration for a moderate reduction in many tariff schedules.

The trend of events, especially in Cuba, will govern to a large extent the language of the plank covering colonial policy. It is Mr. Bryan's idea not to antagonize the settled feeling of the people in this matter. The slogan will be reform rather than the absolute dis-establishment of the system already adopted.

### State Control of Railroads.

Many Democratic State conventions, particularly Nebraska, have placed the party on record as favoring Government ownership of railroads and telegraphs. While it is not stated in so many words, it is given out that Mr. Bryan will not ask the National Convention to insert such a plank. In fact, it is plainly told that it will be omitted. A definition of where the party stands on the railroad question will be given, but this will be more in the way of relegating the railroads to state control.

Mr. Bryan believes in states' rights and

It is stated that he would not centralize the regulation of railroads in the General Government. His ground for this is that the conditions vary in different states and that no body of Federal officers, no matter how unimpeded they may be, are capable of seeing and understanding the requirements of different sections. The advantage of state regulation is expected to be worked out in Nebraska, where many drastic laws have been passed governing common carriers. The leaders believe that in Nebraska and other states, where similar laws have been enacted, will be proven the success of state regulation.

### Free Silver Dead and Buried.

Free silver is dead and Mr. Bryan will admit it by accepting a platform from which its mention will be eradicated. The monetary question is considered settled. Government economies will receive the usual attention and a halt will be demanded in naval extensions. It will be declared that the various sums being spent on armament may be better employed in irrigating the plains of the West.

Development of river navigation is to be indorsed.

Election of Senators by direct vote of the people, reformation of civil service



Secretary of State Elihu Root, Who Spoke on the Japanese Question at the International Law Convention.

rules and a strong foreign policy will be strongly proclaimed and pledged. There will be poor solace in the platform for Populists. Indeed, no overtures of any sort are to be made to them, beyond a general invitation directed to all classes to join forces with the Democratic party in an effort to enforce the principles proclaimed and demanded in the Democratic faith.

### LET GOVERNMENT PAY COST

### Roosevelt Studying New Solution for Campaign Fund Problem.

CHICAGO, April 19.—A dispatch to the Tribune from Washington says: President Roosevelt is studying a new departure in politics which, whether it is carried out to any practical result or not, is certain to excite widespread discussion among public men the country over.

The agitation for publicity of campaign expenses and the various laws of the different states for the official primary elections has caused the President to question in his own mind whether it may not be possible to devise a scheme by which the Government may assume the responsibility, not only for the actual expense of the election, as at present, but for the legitimate campaign expenses of the regular nominees.

### Domestic.

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## TWENTY MILLIONS AT DEATH'S DOOR

### Russian Famine Worst in History.

### MUST BE FED TILL HARVEST

### People Have Sold All, Themselves Included.

### DISEASE HAS FULL SWING

### Dr. Kennard Sends Authentic Report to Society of Friends—Funds Are Needed to Save Millions of People From Starvation.

LONDON, April 19.—Writing from the Russian famine district, Dr. Kennard, sent by the Society of Friends to investigate conditions, draws an appalling picture of the suffering. He says: "This is the worst famine Russia has known. No less than 20,000,000 people cannot live without aid to see another harvest, and I may say that this figure has been approved not only by the Zemstvo organization, but also by the government itself. The date of the harvest will vary with the latitude, and the famine-stricken region is spread over such a wide area (five times the size of France) that more than 10 degrees of latitude are involved. This means that in direct proportion from south to north the harvest will be from July 3 to 23 (new style).

### Must Be Fed Till July Ends.

"Funds will be needed to the end of July to feed all these millions, and then the harvest will bring relief, but there are many hundreds of thousands to whom the harvest will not bring relief, for they have neither land nor cattle. "The few cows in existence are in such a pitiful condition that they are useless for milking purposes. The result is that young children are being forced to eat the coarse bread and indigestible young cubs. "The people have sold their all, and in most cases have likewise sold in advance all that the harvest might bring them. They have sold themselves and their work, and from all over the

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## THE DEVASTATED RESIDENCE DISTRICT OF SAN FRANCISCO, LOOKING TOWARD THE HOTEL FAIRMOUNT WHERE THE ANNIVERSARY BANQUET WAS HELD



AT THE FAIRMOUNT HOTEL, IN THE BACKGROUND, OVERLOOKING THE CITY AND THE BAY OF SAN FRANCISCO, THE MERCHANTS' ASSOCIATION HELD THEIR BIG BANQUET THURSDAY NIGHT TO COMMEMORATE THE EVENTS OF THE BIG FIRE. ALL THE BUILDINGS WERE SWIFT AWAY UP TO AND BEYOND THE HOTEL. THOSE SEEN IN THE PICTURE HAVE BEEN ERECTED WITHIN THE YEAR.