明治 年 月 日起草
同 四 年 五 月 四 日發遣

政務局長

第一課

主任

社
辰馬商會
安藤郎方
私行李迄

山口縣知事

外務省

別紙陳者辰丸船荷ノ内
別早御調査之上
いつ便ニ積送方御取計
陳者本月四日附ヲ以テ
已ニ及
意御含置
月 日

神戸辰馬商會安藤郎方印

山口縣次郎

機密第一〇九六号

在香港日本領事館

昭和四年三月十七日

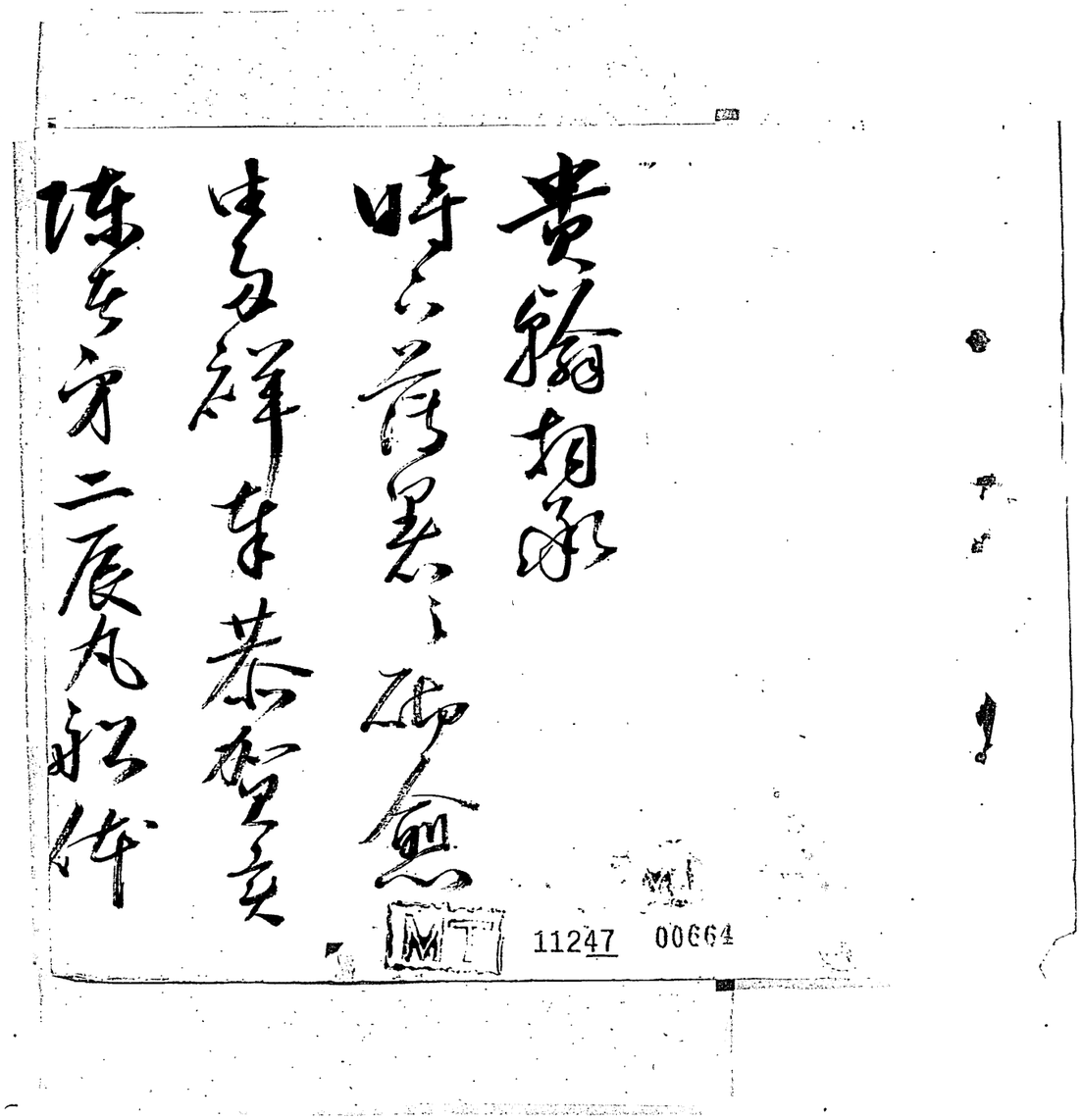
在香港日本領事館
領事 香月恕平

外務大臣伯爵 幣原喜重郎 殿

COPY OF TELEGRAM.

Canton 1.10/ P.M. 7/April, 1908.
4.45/P.M.

Boycott. Matters are getting serious. Trying to buy newspapers. We are acting with great caution. Please confirm. Will telegraph as soon as we find what is the total amount of cost before decision.



公第 六七 號

第二辰丸虎門斜西地方抑留中
清國軍艦ヲ購入品價格通知ノ件

過般虎門斜西地方ニ抑留中、第二辰丸ニ
都用米並ニ副食品ニ其買入不便ナル為メ清國
軍艦等ニ托シ購入致居候處同船出帆ノ際
迄ニ其價格不明ニ付右問合セ方當館ヘ
嘱出候ニ付最寄ニ清國其筋ヘ及照會置候處
今般別紙寫ニ通リ廣東通貨四十七元八十四仙
七毫ニ相成居候趣回報有之候ニ付右ニ通回
船ノ主ヘ御移牒ニ可相成哉ニ付伺ニ及候
爲相係ヘ此段申進候敬具

明治四十一年五月一日

在廣東
領事 上野專一

外務大臣伯爵林董殿

在清國廣東日本領事館

○茲將備辦二辰丸船上食品物價目列

白米一百斤	五元六角五仙
雞壹一百五十三粒	二元三角六仙
白糖五斤	四角七仙
竹菜	二十五文
白菜五十斤	一元
肉七斤	一元零四十九文
雞一尾	七角七十三文
草魚十一斤	一元四角
荷蘭苣	一角
芥菜	二角五仙
魚五斤	八角八仙
藕三斤	一角
大小薯八斤	三角二仙
芽菽三斤	一角二仙
牛肉十九斤零五兩	三元四角六仙
艇俑	一角二仙
點心	一角五仙
公牛奶五罐	一元二角五仙

在清國廣東日本領事館

雞蛋二百隻		三元四角
牛油半磅		六角
薯仔五斤		二角五仙
杏仁餅仔五斤		二元
紅茶五斤		一元一角一仙
烟仔兩罐		一元
葱菜		五角
鹹魚四斤		一元一角一仙
水魚		四元七角五仙
鮫魚二条		一元九角五仙
	在清國廣東日本領事館	
猪油五斤		一元五角
白蟮		一元九角
餅乾二罐		六角
黃牙白		二角五仙
葱		一角
烟仔一箱		二元三角五仙
牛肉二十五磅		四元四角
麪包		六角
以上統共四十七元八角四十七文		

寫

外務省

電受第一七五八号
在清帝国公使
発信地名
着信地名
大正
年
月
日
午前
午後
時
分
発
着

林公使
大臣

本邸

当館ノ事務ニ関シ緊急ノ用務アルニ付キ至急帰京ノ上拝謁ノ栄ヲ得度キ旨申出デタルニ付キ本使ハ之ヲ許可シ置キタリ就テハ貴官ニ於テ至急ノ訓令ヲ発セラレ度シ

林公使ハ帰京ノ上ハ直ニ上海ニ赴キ同地ニ於テ暫ク静養ノ上再ビ北京ニ帰任スル筈ナリ

大臣
次官
政務
通商
人事
會計
取調

No. 一七六

北京発
本省着
四ヵ一年五月十八日後九時
十九日前〇時二〇分

林公使
大臣

本邸

当館ノ事務ニ関シ緊急ノ用務アルニ付キ至急帰京ノ上拝謁ノ栄ヲ得度キ旨申出デタルニ付キ本使ハ之ヲ許可シ置キタリ就テハ貴官ニ於テ至急ノ訓令ヲ発セラレ度シ

林公使ハ帰京ノ上ハ直ニ上海ニ赴キ同地ニ於テ暫ク静養ノ上再ビ北京ニ帰任スル筈ナリ

我新聞社ヨリテ彼ノ吹聴スル所ノ事ヲ
ト認ムルニツキ特ニ劇像右ニ御注意相
成タク陳ハ損害額調査ノ上野領事
ヲシテ尚ホ總督ニ提出セシテ速ニ御訪的ニ協
定セシメラルヽ様御計ハレタク
尚ホ電報ヲ乞フ
友姓

No.

大臣
次官
政務

人事
會計
通商
取調

第3門

要旨付ヲ

秘 外務大臣

着 倫敦
本省着四十一年五月二十日後〇、二〇
二五〇

船津副領事

第一五號

辰丸ノ荷物取調費其他ノ費用ニ関シ同船
代理店ヨリ數度辰馬商會ヨリ電報ニテ照
會ニ及ヒタルモ迄事ナキ由就テハ船主書類ノ貨
物ニ關スル伝票ニ對シテハ至急送付アリタシ
取調商會ニ嚴達アリタシ

REEL No. 1-0069

0021

在香港日本領事館

明治四十一年五月十九日領受

香公第八五号

辰丸事件ニ関スル匿名信書寫及俗謡一部送付ノ件

本月十日発電信第七号申進置候辰丸事件ニ関スル俗謡一篇幷ニ右ニ対スル匿名信書寫御参考迄及進達候也

明治四十一年五月十一日

在香港

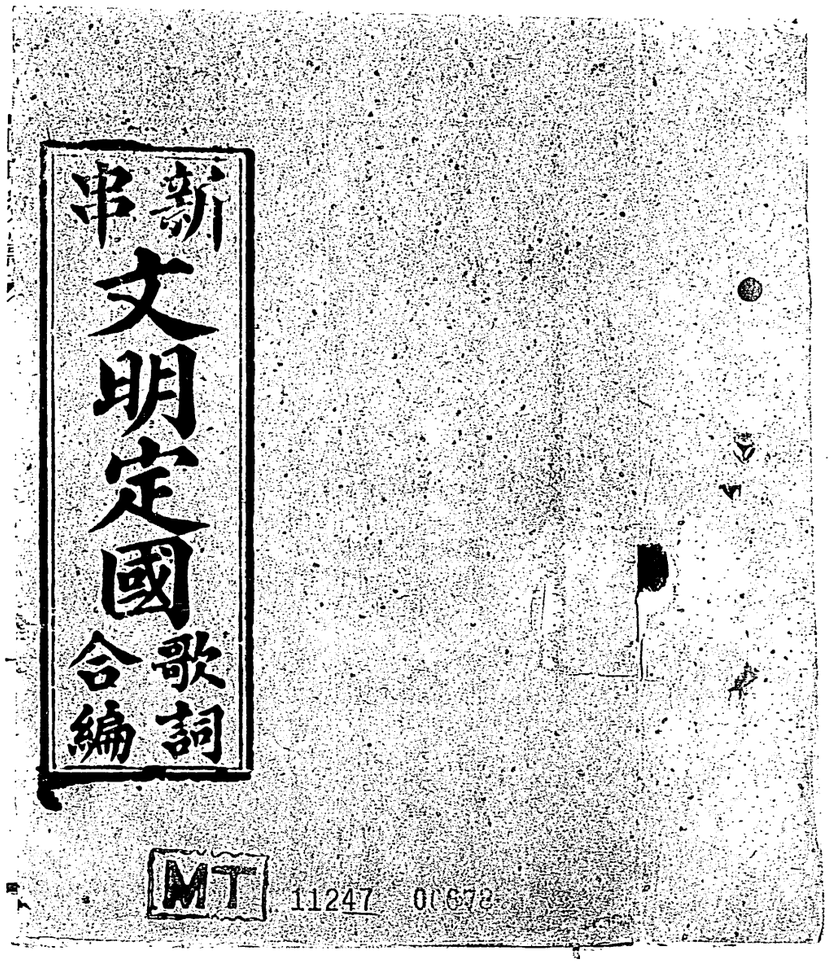
副領事 船津辰一郎

外務大臣伯爵林董閣下殿

日人無恥、私運軍伙、接濟賊匪、害我粵人、
擾害粵地、以你强權、不顧公理、現行抵制、
实力為之、將你日人、誠死為止、自今以後
中国得强、当你作豕、我係粵人、應奮吾志
你地日人、不久就死、你要記得、不可忘之、

不平人寄

在香港日本領事館



國恥紀念歌

直可恨　辦理呢只、辰光
外部昏庸真失算　全無公理屈服強權
雖則了結和平究竟　關章條約一概唔知
日本理偏　主權喪失問你點樣
領海作爲公海線　國勢從今更倒顛
常斯危局點得安然　幸喜我地國民程度
開會力爭來去發電　個位陳君惠普係自
個的情形講起我就　政府因之唔贊羨
日本堅持無乜改變　要求五欵更重新綫

國恥紀念歌

懲官購械重要賠錢　喪權辱國知難免　如斯結局你話心酸
所以國恥會開留紀念　偷　自　怨　國民宜奮勉
待我歌成　五欵譜出琴絃
第一欵　實在羞家　升旗謝罪愧煞中華　低頭認錯真刁架
放炮幾乎重要兩打　平声撤去龍旗唔在　堂堂大國変粒芝麻
就把旭日國旗重掛　我同胞眼白白　俾佢請到後禍無窮真係可怕
佢源源偷運點樣稽查　個的賊匪已經難以打　若果軍械精良更重要
正一係東吳將禍嫁　佢從旁窺伺壁乱　呆到鋒烟遍地難消
個陣列強視勢就把　我國瓜分　國亡奴隸爲牛馬　唉　須要想吓

我便狂歌大叫唱出 同胞休逸暇
鉄板銅琶
第二款 更輸虧 個只辰光釋放越發 關章條約都唔計
不堪題
免炒幾乎好似怕妻 張督力爭無効為 國民發電拒唔黎
想起十七個朝 直翳肺 滿城憤恨幾咁悲凄 炮喺廿一声來做禮謝
咁就曰旗高掛放出重圍 我想軍火運來原屋犯例 連船拘獲冰要擔低
黙佑政府諸人唔顧國體 專門媚外得咁皆迷 交涉歷來皆失勢
外部猶如牛豆雞 國恥從今難以洗 真受制 放長双眼睇
呢陣民權激起四萬萬心齊 第 三 款 好 貪 狠
監人購買舊軍裝 個的鎗碼歷年存放在港 佢重新打整運往東洋

國恥紀念歌 一一

轉儀到澳門通我乱党 被吾緝獲佢幾十多箱 連船帶貨拖埋岸
照約充公委實在行 論理佢本來唔够誇 總係政府無能就要做老鄉
現銀交易重話唔賒賬 就要在粤東籌欵兌 佢媚外性成真怪象
呢場交涉咁就輸清 激動國民公憤皆同樣 引為國恥沒世難忘
發電力爭心胆壯 蒙影響 民權真漲彭 試睇文明對待四海名揚
第四款 實堪殤 要我懲官革吏為也來由 經緯海圖吳弁辯透
佢卸駁當時實在交州 遂隔澳門還未入口 明明領海是我中流砥柱
緝獲有權將作扣 既然偷運就要把國收 商約關章無也嘩漏

轉儀到澳門通我党 被吾緝獲佢幾十多箱 連船帶貨拖埋岸
照約充公委實在行 論理佢本來唔夠講 總係政府無能就要
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發電力爭心胆壯 蒙影響民權真漲彭 試睇文明對待四海
第四欵 實堪嘅 要我懲官革吏爲乜 名揚
佢卻駁當時實在 交 遠隔澳門還未入口 經緯海圖吳弁辯透
緝獲有權將佢扣 既然偷運就要把國 明明領海是我祖柄
商約關章無乜嗰漏

新文明定國歌詞合編

豈容藉口任意要求　點想政府諸人真正叫般般從順不知羞

是非曲直唔根究　將功爲罪革去銜頭俾佢強權迫脅真受難

唉　知愧否　痛心和疾首

喊破嚨喉　唱到第五欵

更加賠欵總要累到國民窮　抽剝咁多來去進貢地皮剷盡就要穿窿

政府如今仍係發夢　主權喪盡重孝敬銅諸起外交失敗真堪痛

十場交涉就有九場空　路礦喺利權都俾人地受用但得外人見好就樣依從

我想賠欵歷來還未斷種　況且二辰九呢件越發唔公　三十萬多金錢双手奉送

試問欵從何出得咁禮物豐隆　不外窮抽極剝把我百般羅掘實在好陰功

厭我唱出呢個情形 長歌浩歎喚醒愚蒙 我想國恥與民權都要重
就心血湧

三千毛瑟我方任開 切戒野蠻休暴動 須合衆 大家齊奮勇
通

個陣同胞四萬萬 咧發奮爲雄 歌完五欵件件分清
又來請吓自治會嘅情形 愛國救群眞係可敬 共謀幸福理所當應
國恥開會齊引領 個位陳君惠普首去簽名 佢發電力爭唔顧命
縱然查辦挫作犧牲 可恨政府昏庸終不醒 任得日人要索件件應承
呢陣事幹已完無可救正 只得晚回權利把工變求興 郷船會社久已規模定
五元一股辦法文明 再加推廣更把章程訂 改良土貨精益求精
振興實業一定占優勝 你地同胞個個 都要一律歡迎

股份任從多少認 毋拘千百與零星 但求商務臻隆盛
何愁衆志不成城 事關公益誰唔應 權利爭回實在不輕
你地列位同胞須要聽 須 要 聽 歎我拚流熱血敢作不平
挽回欲國定昇平

另附女士劉守初詩六章

繞了西江又二辰 列强均勢兆瓜分 無窮家國興亡感
遍地羶腥逼楚氣 嶺南制府有張公、 理直如何肯曲從
家家爭繡使君容 爲問買絲繡底事

種族傷心涕自揮　河山錦繡事全非　燕京急電傳軍府
日艦從容奏凱歸
傷心東望悵扶桑　國恥朦朦不可忘　恣聽炮声轟粤海
一声一淚斷柔腸
如此式微實可哀　波蘭印度眼前來　可憐中夏神明胄
國恥紛紛大會開
安得朱雲請上方　顓大無路倍惶惶　堅持貿易自由義
萬衆同心國自強

國恥紀歌終

明治 年 三月廿 日起草
同 年 月 一 日發遣ス

政務局長 [illegible]

第一課

主任 [illegible]

外務省

明治　年　月　日　起草
同　年　月　日　發送

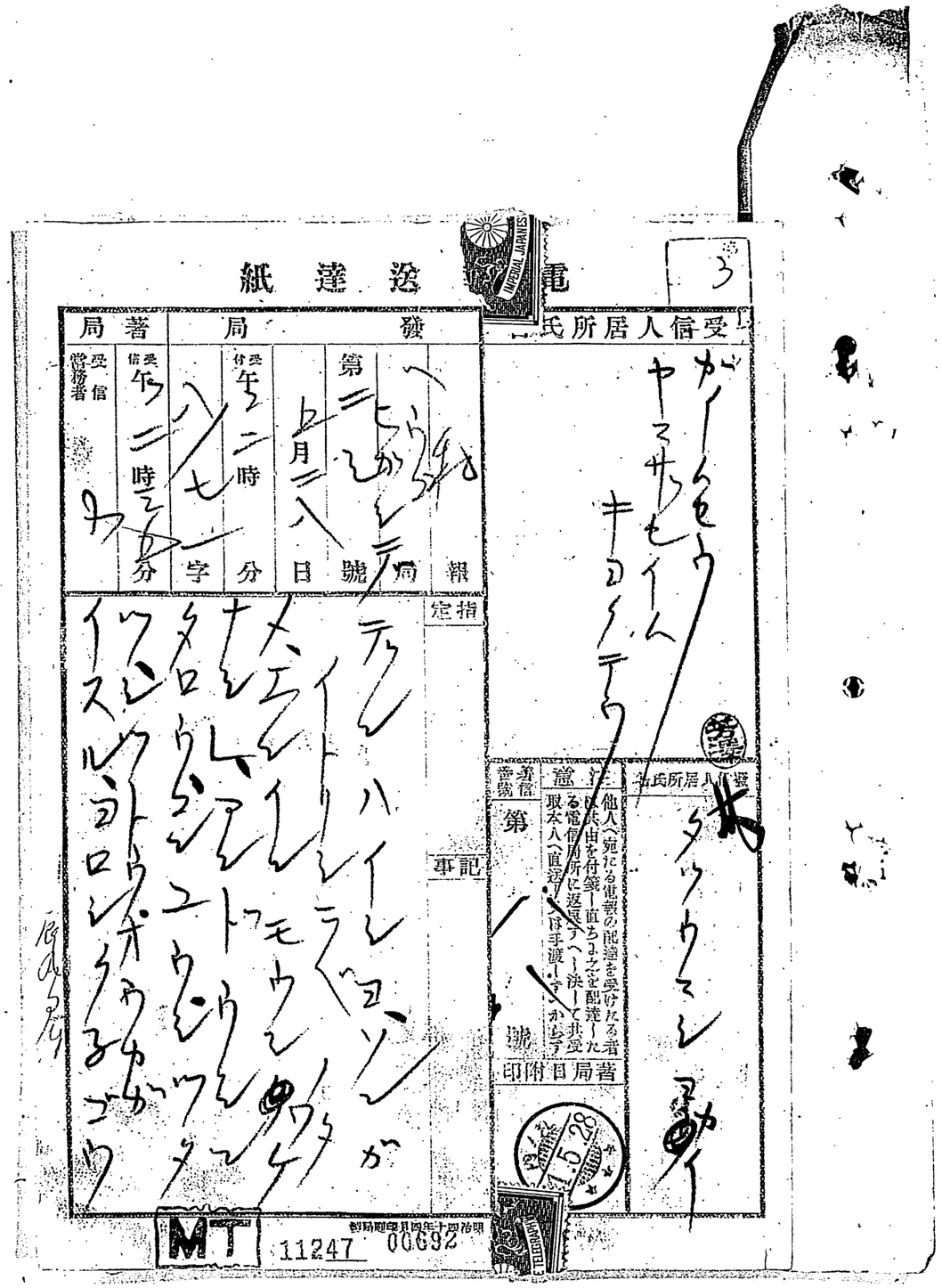
神戸

在九紅佐揚高額至急届出ラ
タク又當方ヨリ未着ノ上京セシ
ラレタシ

主任

電送第1337号
明治61年5月27日0時0分發

電送第　號
明治　年　月　日發　時　分發


電送達紙
3
受信人居所氏名
局發
第
號
局
月
日
時
分
字
局著
受信
受付
時
分
受信
營務者
指定
事記
注意
他人へ宛たる電報の配達を受けたる者は其由を付箋し直ちに之を配達し又は其電信局所に返戻すへし決して其受取を他人へ直接に手渡すへからす
著局日附印
第
號
MT
11247
00692
明治四十五年四月電報局製

REEL No. 1-0069

0033

電文

山座局長宛

電報第、拂害再延引申訳ナシ、当分ノ間ハ今夕出主、出欧ノ筈ニ付此段御承知相成度シ

原敬

五月十八日午後二時三十五分着

外務省

明治四十一年五月廿九日接受 主管 欧務局 第一課

機密受第1316號

機密公第二一號

辰丸事件ニ関スル件

本件ニ関スル本年四月發刊ノ米國國際法雑誌第二巻第二號中第二辰丸拿捕事件ニ関シ之ヲ以テ葡萄牙領海以外ニ發生セシモノト假定シ學者ノ著書ヲ援キ國務長官ノ主張ヲ述ヘ平時ニ理以外ハ公海ニ於ケル外國船舶ノ臨検ハ理論上並ニ先例上共ニ根拠ナキ旨ヲ論難シ帝國政府ノ主張ヲ以テ勿論正當ナル論文掲載有之候

右論文ハ同雑誌編輯委員國務省法律事務官 James Brown Scott 氏ノ執筆ニ係ル趣ニ有之多分國務長官ノ意ヲ承ケタルモノト被思候ニ付参考迄ニ右一部茲ニ差進候間御査閲相成度候

右ノ如ク法理上本件ニ関スル帝國政府ノ處置ノ正當ナルコトニ付テハ寸毫ノ疑ヲ挟ム者無之候ヘ共追々極東地方ヨリ新聞紙上ニ通知ノ趣モ有之機敏ナル官吏ヲ以テ政府ヲ構成シ組織完全ナル帝國ニシテ果シテ尾ニ搭載セル武器弾薬ノ終局目的地何處ニ在ルカヲ洞察スルコト能ハサリシカトニ付テハ徳義上ノ論点ニ関シテハ米國人ノ胸底ニ幾分ノ疑念ヲ抱藏スル哉ニ被感候此點ハ最モ深ク閣下ノ高察ヲ煩スヘキ一要点ニ有之様被存候

此段申進候 敬具

明治四十一年五月七日

在米

特命全権大使男爵高平小五郎

外務大臣伯爵林董殿

在米國日本大使館

MT 11247 00694

MT 11247 00695

takes its name, is admirably adapted by nature for the location of a strong naval and military base dominating the approach to Finland and to Stockholm.

The islands were definitely acquired by Russia by the treaty of Frederikshamm, signed September 11, 1809. The Swedish plenipotentiaries were reluctant to give up the Aland Islands at all, but wished in any event an agreement on the part of Russia not to fortify them. Russia, however, refused.

The fortifications which Russia erected were razed by the French and English during the Crimean war. At the Congress of Paris, which met at the conclusion of the war, the allies asked Russia to agree not to undertake any military or naval construction upon the islands. The Russian plenipotentiary, Count Orloff, assented, but wished to sign a separate agreement between France, Great Britain, and Russia, the only Powers who had taken part in the operations in the Baltic; but at the suggestion of the Austrian plenipotentiaries the separate act was annexed to the general treaty.

The question now arises, Has Sweden or any power not signatory to the special agreement a right to protest against the use of the islands as a military base? It must have been evident that Russia's object in signing a special agreement was to limit her obligation to the five Powers which signed with her, and that she would, as soon as possible, throw over this restriction, rejected in 1809, could not be doubted.

However, on the other hand, it may be said that even if some of the signatories to the agreement should object, the fact that this agreement is annexed to a treaty of such general purport as to regulate relations of the European powers adds to it something of the force of that treaty. That Russia was justified in throwing off the restrictions upon her sovereignty in the Black Sea is generally accorded. A humiliating and galling condition imposed after defeat will only be endured until the power is strong enough to disregard it. But the Aland matter is not identical, first, because there is nothing humiliating about its observance, and, secondly, because the observance of the agreement is of such importance to the security of Sweden.

Treaties which the great European powers make between themselves have certain advantages for those powers; for it leaves them free to declare either that they acted as the agents of all Europe, and hence bound by their action the nonparticipating powers, or to maintain that the treaty concerns the signatories alone — all other states being third parties.

foreign powers intervened in the causes. In later times it is safe to infer that judicial as well as political tribunals will insist on one line of marine territorial jurisdiction for the exercise of force on foreign vessels, in time of peace, for all purposes alike.

The practice of the American Government is set forth by two Secretaries of State, who brought to the performance of the duties of their office trained legal minds. In a note dated January 22, 1875, written by Mr. Fish, Secretary of State, that learned authority says:

> We have always understood and asserted that, pursuant to public law, no nation can rightfully claim jurisdiction at sea beyond a marine league from its coast. * * *
>
> It is believed, however, that in carrying into effect the authority conferred by the act of Congress referred to, no vessel is boarded, if boarded at all, except such a one as, upon being hailed, may have answered that she was bound to a port of the United States. At all events, although the act of Congress was passed in the infancy of this Government, there is no known instance of any complaint on the part of a foreign government of the trespass by a commander of a revenue cutter upon the rights of its flag under the law of nations.[1]

And his learned successor, Mr. Evarts, stated squarely, on April 19, 1879, that:

> An attack by Mexican officials on merchant vessels of the United States, when distant more than 3 miles from the Mexican coast, on the ground of breach of revenue laws, is an international offense, which is not cured by a decree in favor of the assailants, collusively or corruptly maintained in a Mexican court.

And in a later note, dated March 3, 1881, Mr. Evarts held that—

> The wide contradiction between the several statements does not suffice to bring the position of three of the vessels at the time within the customary nautical league. This Government must adhere to the 3-mile rule as the jurisdictional limit, and the cases of visitation *without that line* seem not to be excused or excusable under that rule.[2]

It is unnecessary to appeal further to authority. The jurisdiction of the home government may affect its vessels upon the high seas or in places without the jurisdiction of any other country, but it is abundantly clear that the claim to visit foreign merchant vessels beyond the 3-mile limit is without foundation in theory as it is without reputable practice. It is true that the great authority of Chief Justice Marshall may be quoted in support of the practice, but it is well established that the views

[1] Moore's International Law Digest, Vol. I, p. 731.
[2] Moore's International Law Digest, Vol. I, p. 732.

expressed by the learned Chief Justice have not been supported by subsequent decision of that august tribunal over which he presided. As Professor John Bassett Moore has happily said:

> It is not, however, by any means essential to Marshall's pre-eminence as a judge to show that his numerous opinions are altogether free from error or inconsistency. In one interesting series of cases, relating to the power of a nation to enforce prohibitions of commerce by the seizure of foreign vessels ouside territorial waters, the views which he originally expressed, in favor of the existence of such a right (Church v. Hubbart, 2 Cranch, 187), appear to have undergone a marked if not radical change in favor of the wise and salutary exemption of ships from visitation and search on the high seas in time of peace (Rose v. Himely, 4 Cranch, 241)—a principle which he affirmed on more than one occasion. (*The Antelope*, 10 Wheaton, 66.)[3]

In view, therefore, of the circumstances of the case and the unjustifiableness of the seizure of a Japanese vessel, although in Chinese waters, beyond the 3-mile limit, it is gratifying to note that China has receded from its untenable position and that the Chinese Government accepts the five conditions presented by Japan for the peaceful settlement of the incident:

1. An apology, with the saluting of the Japanese flag in the presence of the consul;
2. Unconditional release of the vessel;
3. Payment of the actual cost of the arms under detention;
4. China to engage to investigate the circumstances of the seizure and take suitable measures against the responsible persons;
5. An indemnity for the actual losses.

The *London Times* of March 14, 1908, from which the preceding conditions are quoted, further states that—

> Upon the acceptance by China of the above conditions, Japan undertakes to cooperate in the task of preventing the smuggling of arms into China.

The incident, therefore, seems to be closed in accordance with enlightened theory and practice.

THE FORTIFICATION OF THE ALAND ISLANDS

Since the days when Peter the Great, after having vanquished his rival, Charles XII, seized these islands Russia and Sweden have been desirous of securing possession of them. These islands command the entrance to the Gulf of Bosnia, and the largest, from which the group

[3] Moore's International Law Digest, Vol. VII, p. 312.

seizure of a foreign vessel when beyond the territorial jurisdiction. The statute may well be construed to mean only that a foreign vessel, coming to an American port, and there seized for a violation of revenue regulations committed out of the jurisdiction of the United States, may be confiscated; but that, to complete the forfeiture, it is essential that the vessel shall be bound to, and shall come within, the territory of the United States after the prohibited act. The act done beyond the jurisdiction is assumed to be part of an attempt to violate the revenue laws within the jurisdiction. Under the previous sections of that act it is made the duty of revenue officers to board all vessels, for the purpose of examining their papers, within four leagues of the coast. If foreign vessels have been boarded and seized on the high sea, and have been adjudged guilty, and their governments have not objected, it is probably either because they were not appealed to or have acquiesced in the particular instance, from motives of comity.

The cases cited in the author's note do not necessarily and strictly sustain the position taken in the text. In *The Louis* (Dodson, II, 245) the arrest was held unjustified because made in time of peace for a violation of municipal law beyond territorial waters. The words of Sir William Scott, on pages 245 and 246, with reference to the hovering acts, are only illustrative of the admitted rule that neighboring waters are territorial; and he does not say, even as an *obiter dictum*, that the territory for revenue purposes extends beyond that claimed for other purposes. On the contrary, he says that an inquiry for fiscal or defensive purposes, near the coast but beyond the marine league, as under the hovering laws of Great Britain and the United States, "has nothing in common with the right of visitation and search upon the unappropriated parts of the ocean;" and adds, "A recent Swedish claim of examination on the high seas, though confined to foreign ships bound to Swedish ports, and accompanied, in a manner not very consistent or intelligible, with a disclaimer of all right of visitation, was resisted by the British Government, and was finally withdrawn."

Church v. Hubbard (Cranch, II, 187) was an action on a policy of insurance, in which there was an exception of risks of illicit trade with the Portuguese. The voyage was for such an illicit trade, and the vessel, in pursuance of that purpose, came to anchor within about four leagues of the Portuguese coast; and the master went on shore on business, where he was arrested, and the vessel was afterwards seized at her anchorage and condemned. The owner sought to recover for the condemnation. The court held that it was not necessary for the defendants to prove an illicit trade begun, but only that the risks excluded were incurred by the prosecution of such a voyage. It is true that Chief Justice Marshall admitted the right of a nation to secure itself against intended violations of its laws by seizures made within reasonable limits, as to which, he said, nations must exercise comity and concession, and the exact extent of which was not settled; and, in the case before the court, the four leagues were not treated as rendering the seizure illegal. This remark must now be treated as an unwarranted admission. The result of the decision is that the court did not undertake to pronounce judicially, in a suit on a private contract, that a seizure of an American vessel, made at four leagues, by a foreign power was

void and a mere trespass. In the subsequent case of Rose v. Himely (Cranch, IV, 241), where a vessel was seized ten leagues from the French coast and taken to a Spanish port, and condemned in a French tribunal under municipal and not belligerent law, the court held that any seizures for municipal purposes beyond the territory of the sovereign are invalid; assuming, perhaps, that ten leagues must be beyond the territorial limits, for all purposes. In Hudson v. Guestier (Cranch, IV, 293), where it was agreed that the seizure was municipal, and was made within a league of the French coast, the majority of the court held that the jurisdiction to make a decree of forfeiture was not lost by the fact that the vessel was never taken into a French port, if possession of her was retained, though in a foreign port. The judgment being set aside and a new trial ordered, the case came up again, and is reported in Cranch, VI, 281. At the new trial the place of seizure was disputed; and the judge instructed the jury that a municipal seizure, made within six leagues of the French coast, was valid and gave a good title to the defendant. The jury found a general verdict for the defendant, and exceptions were taken to the instructions. The Supreme Court sustained the verdict — not, however, upon the ground that a municipal seizure made at six leagues from the coast was valid, but on the ground that the French decree of condemnation must be considered as settling the facts involved; and, if a seizure within a less distance from shore was necessary to jurisdiction, the decree may have determined the fact accordingly; and the verdict in the Circuit Court did not disclose the opinion of the jury on that point. The judges differed in stating the principle of this case and of Rose v. Himely; and the report leaves the difference somewhat obscure.

This subject was discussed incidentally in the case of the *Cagliari*, which was a seizure on the high seas, not for violation of revenue laws, but on a claim, somewhat mixed, of piracy and war. In the opinion given by Dr. Twiss to the Sardinian Government in that case, the learned writer refers to what has sometimes been treated as an exceptional right of search and seizure, for revenue purposes, beyond the marine league, and says that no such exception can be sustained as a right. He adds: "In ordinary cases, indeed, where a merchant ship has been seized on the high seas, the sovereign whose flag has been violated waives his privilege; considering the offending ship to have acted with *mala fides* towards the other state with which he is in amity, and to have consequently forfeited any just claim to his protection." He considers the revenue regulations of many states, authorizing visit and seizure beyond their waters, to be enforceable at the peril of such states, and to rest on the express or tacit permission of the states whose vessels may be seized.

It may be said that the principle is settled that municipal seizures can not be made, for any purpose, beyond territorial waters. It is also settled that the limit of these waters is, in the absence of treaty, the marine league or the cannon shot. It can not now be successfully maintained either that municipal visits and search may be made beyond the territorial waters for special purposes or that there are different bounds of that territory for different objects. But, as the line of territorial waters, if not fixed, is dependent on the unsettled range of artillery fire, and, if fixed, must be by an arbitrary measure, the courts, in the earlier cases, were not strict as to standards of distance, where no

it may be eliminated from consideration. The question, then, presents itself whether or not a Japanese vessel upon the high seas beyond the 3-mile limit is liable to seizure, detention, and confiscation of the cargo on the ground that if the voyage be completed the smuggling laws or the revenue laws of China will be violated. Reduced to simplest form the question, therefore, is whether a seizure is permissible beyond the 3-mile limit in order to prevent a violation of the revenue laws of the country effecting the seizure. For the purposes of discussion the alleged drawing down of the Japanese flag may be omitted, because the question is not what particular act may be done, but whether any act may be committed against the foreign merchant vessel found hovering more than 3 miles off the coast with the intention of violating the revenue laws of China.

The right of visit and search upon the high seas is universally permitted in time of war, but it is a belligerent right and does not exist in time of peace, and if exercised it is wholly at the risk of the country committing the act. China, whatever the internal situation of the country may be, is outwardly at peace, and war, in the sense of international law, does not exist. Therefore the right of visit and search as a purely war right does not arise and we return to the question whether the foreign merchant vessel may be seized beyond the 3-mile limit for a violation of revenue laws. In practice and in theory the right has been claimed and exercised, and there are, indeed, statutes which permit the visitation and search of merchant vessels beyond the 3-mile limit in order to prevent the violation of the revenue laws. These acts may be divided into two classes: Revenue laws extending the right of visit and search beyond the 3-mile limit to vessels of the home or foreign country before entering port. Such acts are permissible. The rights of foreign vessels are not involved, although foreign cargo may incidentally be. A country may extend its jurisdiction to a vessel of its own nationality upon the high seas, because, the high seas being the highway of the world and not subject to any jurisdiction, the laws of the home port may be extended to its merchant vessels so placed, on the theory that the municipal law may extend to nationals not within the jurisdiction of any foreign country and therefore not subject to its rules and regulations. In Wheaton's International Law the following passage is found:

> The British "hovering act," passed in 1736 (9 Geo. II, chap. 35), assumes, for certain revenue purposes, a jurisdiction of four leagues from the coasts, by prohibiting foreign goods to be transshipped within that distance without payment

> of duties. A similar provision is contained in the revenue laws of the United States, and both these provisions have been declared by judicial authority in each country to be consistent with the law and usage of nations.

The statute referred to by Mr. Wheaton was passed on March 2, 1797, sec. 27, and reads, as incorporated into the Revised Statutes, as follows:

> SEC. 2760. The officers of the revenue cutters shall respectively be deemed officers of the customs, and shall be subject to the diretion of such collectors of the revenue, or other officers thereof, as from time to time shall be designated for that purpose. They shall go on board all vessels which arrive within the United States, or within four leagues of the coast thereof, if bound for the United States, and search and examine the same, and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination.

The "hovering act" of Great Britain, referred to by Wheaton, has been, according to Mr. Boyd (Boyd's Wheaton, 241), long since repealed. This brings us to a consideration, therefore, of the American statute and its interpretation. The ablest commentator on Wheaton, and indeed one of the clearest and subtlest authorities on international law — Mr. Richard Henry Dana — takes issue with the text of Wheaton quoted, and lays down in no uncertain terms what he considers to be the true doctrine of international law in regard to municipal seizures beyond the 3-mile limit. As Mr. Dana's note is so important and has so largely influenced American practice, it is quoted in full:

> The statement in the text requires further consideration. It has been seen that the consent of nations extends the territory of a state to a marine league or cannon shot from the coast. Acts done within this distance are within the sovereign territory. The war right of visit and search extends over the whole sea. But it will not be found that any consent of nations can be shown in favor of extending what may be strictly called territoriality, for any purpose whatever, beyond the marine league or cannon shot. Doubtless states have made laws, for revenue purposes, touching acts done beyond territorial waters; but it will not be found that, in later times, the right to make seizures beyond such waters has been insisted upon against the remonstrance of foreign states, or that a clear and unequivocal judicial precedent now stands sustaining such seizures, when the question of jurisdiction has been presented. The revenue laws of the United States, for instance, provide that if a vessel, bound to a port in the United States, shall, except from necessity, unload cargo within four leagues of the coast, and before coming to the proper port for entry and unloading, and receiving permission to do so, the cargo is forfeit, and the master incurs a penalty (act 2d March, 1797, sec. 27); but the statute does not authorize a

(The American Journal of International Law (April, 1908.))

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upon the issue thus determined is ready for submission to the Court of Arbitration. Until the approval of the Senate is obtained the United States is not bound, and in like manner France is not bound until the procedure has been complied with required by the constitutional laws of France. When this procedure has been complied with the *compromis* is established by France. Both parties are thus bound, and until both are neither is. This expedient is as simple as it is wise, because it frees each President from the responsibility of determining whether the vital interests, the independence, or the honor of the Contracting States is involved, and by associating the constitutional organs of each State divides a responsibility which at all times would be grave and which at times might be oppressive.

The third article provides that the convention shall remain in force for a period of five years, so that if the carefully drawn provisions prove unsatisfactory in practice they may be revised in the light of experience.

INTERNATIONAL LAW INVOLVED IN THE SEIZURE OF THE TATSU MARU

The recent seizure (on February 5, 1908) of the *Tatsu Maru*, a Japanese merchant vessel, by Chinese authorities, for the prevention of smuggling of arms, has given rise to grave diplomatic discussion which at one time seemed likely to threaten the peaceful relations of China and Japan. It was alleged that the seizure of the vessel in question, laden with a cargo of arms destined to Macao, a port under Portuguese jurisdiction, which vessel sailed under a Japanese permit, was a justifiable act of the Chinese authorities, whether the vessel was upon the high seas or within the waters technically under the jurisdiction of Portugal, because the delivery of the arms at Macao was colorable, their real destination being to the Chinese interior for illicit purposes. It has been stated and denied that the vessel when seized was within Portuguese jurisdiction, and therefore, for the purposes of this brief note, it may be assumed that the seizure was not within Portuguese waters. If the vessel when seized was within Portuguese waters, the question, already sufficiently complicated, would be more involved, because in seizing the vessel and the cargo consigned to Macao the Portuguese jurisdiction would have been violated in law, however justifiable in morality it may otherwise have been. As, however, Portugal does not seem to advance the contention that the seizure actually took place within its jurisdiction,